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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: L-3 Brashear

File: B-413138.4

Date: December 27, 2016

Gregory H. Petkoff, Esq., Cynthia J. Robertson, Esq., and Carla J. Weiss, Esq., Jenner & Block LLP, for the protester.
Joseph P. Hornyak, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for Raytheon Company, an intervenor.
Erica A. Harder-Smith, Esq., and Deborah Muldoon, Esq., Department of the Army, Army Materiel Command, for the agency.
Lois Hanshaw, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award based on a proposal that included unbalanced pricing was proper where the agency specifically and reasonably determined that the unbalancing did not pose an unacceptable risk to the government.

DECISION

L-3 Brashear (L-3), of Pittsburgh, Pennsylvania, protests the award of a contract to Raytheon Company (Raytheon), of Albuquerque, New Mexico, under request for proposals (RFP) No. W900KK-15-R-0001 issued by the Department of the Army, Army Materiel Command for an optical tracking system. L-3 challenges the agency's evaluation of proposals and best-value determination, and alleges that the agency failed to meaningfully consider evidence of the awardee's unbalanced pricing.

We deny the protest.

BACKGROUND

The RFP, issued on January 27, 2015 under Federal Acquisition Regulation (FAR) subpart 15.3, contemplated the award of a single indefinite-delivery, indefinite-quantity (ID/IQ) contract for the design, development, integration, test, manufacture

and delivery of an optical tracking system called the Advanced Range Tracking and Imaging System (ARTIS)¹ with a five-year period of performance, and a five-year option period. RFP at 1, 15, 104, 109.

The Government envisioned the ARTIS project as a two-phased effort, albeit performed under a single contract. AR, Tab 23, Source Selection Advisory Council (SSAC) Memo to Source Selection Authority (SSA), at 2. The first phase will consist of engineering, manufacturing, and development (EMD) of the tracking system, and use cost-plus-fixed-fee (CPFF) contract line items (CLINs). Id. After the initial operational capability for the EMD phase is achieved, the contract will employ fixed-price CLINs for production of additional systems. Id.

The RFP contemplated that award would be made on a best-value basis, considering four evaluation factors, listed in descending order of importance: (1) technical, (2) management, (3) past performance, and (4) cost/price. RFP at 104, 129. All non-cost/price factors, when combined, were significantly more important than price. Id. at 130. The RFP also stated that the importance allocated to cost/price would increase as the offeror's proposals became more equal in other evaluation areas. Id. at 130.

As relevant here, the cost/price factor required offerors to complete a spreadsheet that provided a cost breakdown for the CPFF CLINs for the EMD phase and the fixed-price CLINs for the manufacturing phase. Id. at 116. The RFP provided for "range pricing" of the fixed-price CLINs based on the RFP's planned ordering schedule, which was broken down by quantities and performance period. Id. at 20, 133. That is, in submitting prices for the fixed-price CLINs, an offeror was required to price units based on ranges of quantities (1-3, 4-6, or 7+) for each year during the option period.² See, AR, Tab 18d, Pricing Workbook, Range Priced CLINs

¹ The ARTIS project is led by the U.S. Army Test and Evaluation Command and designed to provide a cost-effective and technologically superior replacement for the aging fleet of optical tracking instrumentation systems at Department of Defense (DOD) test ranges. Agency Report (AR), Tab 41, Source Selection Decision Document (SSDD), at 1. The envisioned ARTIS solution would consist of two different optical tracking systems: a small, highly-dynamic close-in optical tracking system deployed on an integrated, elevated platform; and a medium-sized fly-out optical tracking system that can accommodate larger payloads for longer range imaging and other requirements, such as the instrumentation package for seeker testing. AR, Tab 18a, Statement of Work, at 1.

² The units to be priced included a remote control unit, a master remote control unit, a tracking system without ranging devices for either a close-in or fly-out optical tracking system, or a tracking system without optical sensors and ranging devices for either a close-in or fly-out optical tracking system. RFP at 20.

Worksheet, at 1. The solicitation provided that the government was not bound to order the quantities listed, or to follow the ordering schedule, explaining that the schedule was provided “for informational purposes and price evaluation only.” RFP at 20.

The RFP stated that the CPFF CLINs would be evaluated for cost realism, while the fixed-price CLINs would be evaluated for price reasonableness. Id. at 133. Additionally, the RFP provided that the agency would evaluate the total evaluated price (TEP), which would consist of the sum of the cost realism analysis of the CPFF CLINs, and the price analysis of the fixed-price CLINs. Id. at 134.

On March 31, the agency received four proposals. The source selection evaluation board (SSEB) conducted initial evaluations. In evaluating price, the cost/price team evaluated the fixed-price CLINs for reasonableness; evaluated the CPFF CLINs for cost realism; and calculated the TEP based on the solicitation’s ordering schedule. AR, Tab 21a, Final Cost/Price Report, at 4. In evaluating Raytheon’s fixed-price CLINs, the cost/price team noted pricing variations in Raytheon’s [deleted], and in [deleted], concluding that Raytheon’s proposal appeared to reflect unbalanced pricing. Id. at 46-47. Additionally, to consider the risk associated with Raytheon’s unbalanced pricing, the cost/price team selected a CLIN in a particular year to calculate the probable costs the government would incur--using the offerors’ prices--if the government ordered different quantities for the range CLINs (hereinafter referred to as the pricing hypothetical). Id. at 48-49.

After completing its initial evaluation, the SSEB recommended to the SSAC that a competitive range be established consisting of the protester, the awardee, and a third offeror. AR, Tab 41, SSDD, at 2. The agency then engaged in discussions with the offerors in the competitive range. Id.

The agency held discussions with Raytheon regarding the issues it considered to indicate unbalanced pricing, i.e., [deleted] and [deleted]. AR, Tab 37a, Raytheon Discussion Items, at 1-2. In response, Raytheon stated that the variances were driven by Raytheon’s assumptions regarding [deleted]. AR, Tab 37b, Raytheon Response to Discussion Items, at 3, 4. Raytheon also stated that it assumed [deleted] and therefore, it priced [deleted]. Id. Finally, Raytheon explained the difference in [deleted]. Id. After receiving responses to discussions, the agency requested final proposal revisions (FPR). AR, Tab 41, SSDD, at 3.

The adjectival ratings that ultimately were assigned to L-3’s and Raytheon’s proposals, as well as the total evaluated prices, are shown in the table below.

	L-3	Raytheon
Technical	Good	Good
Management	Acceptable	Good
Past Performance	Relevant with satisfactory confidence	Relevant with satisfactory confidence
Total Evaluated Price	\$342,026,180	\$350,627,927

AR, Tab 41, SSDD, at 3.

On May 5, the agency notified the protester of award to Raytheon. On May 17, after requesting and receiving a debriefing, L-3 filed a protest with our Office challenging various aspects of the agency's evaluation and its conduct of discussions. Following our development and review of the record in that matter, our Office held a conference call with the parties on August 19, during which we indicated our intent to sustain the protest on the basis of the agency's best-value determination. On August 22, the Army advised our Office that it intended to take corrective action, including conducting a new review of the evaluations, resulting in a new source selection decision, and reserving the right to engage in any additional corrective action it deemed necessary in the course of the corrective action. On the basis of that pending corrective action, we dismissed L-3's protest as academic.

The agency explains that as part of its corrective action, it further examined the alleged unbalanced pricing issue raised in L-3's initial protest. In this regard, the contracting officer (CO) examined the issues identified by the cost/price team related to Raytheon's proposal; the evaluation notices issued to Raytheon and Raytheon's responses thereto; and the agency's final cost/price report. AR, Tab 40, CO Determination on Unbalanced Pricing, at 1-5. In her determination letter, the CO states that she and the contract specialist reviewed the information in the final cost/price report (including the pricing hypothetical) which reflected unbalanced pricing, and considered that information in the context of FAR § 15.404-1(g).³ The CO states that she considered the risks to the government and whether award would result in paying unreasonably high prices for performance, and concluded, in accordance with FAR § 15.404-1(g)(3) that Raytheon's proposal did not represent an unacceptable level of risk to the government. *Id.* at 6. In this regard, the CO stated:

³ Under FAR § 15.404-1(g), where cost or price analysis techniques indicate that an offer is unbalanced, a CO is required to consider the risks to the government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision, and to consider whether award of the contract will result in paying unreasonably high prices for contract performance. FAR § 15.404-1(g)(2). If the CO determines that the lack of balance poses an unacceptable risk to the government, an offer may be rejected. FAR § 15.404-1(g)(3).

[Raytheon] provide[d] a reasonable explanation to detail the variances over range years, and furthermore they did so in a consistent manner. [deleted] These risks are further mitigated through the use of an [ID/IQ] contract vehicle which allows flexibility in ordering and the ability to maximize orders to achieve cost savings as necessary. Therefore, I conclude the unbalanced pricing was appropriately addressed by [Raytheon's] FPR, eliminating the unacceptable risk that would be carried to the Government if indeed the offeror had proposed unbalanced pricing.

Id. at 5-6.

The SSA concluded that Raytheon's proposal represented the best value. AR, Tab 41, SSDD, at 15. In making her determination, the SSA stated that although L-3 and Raytheon had similarly rated technical proposals, Raytheon's stronger management approach and unique opportunity to lower overall production buy quantities merited the payment of the 3% price premium. Id. at 13-15. Additionally, the SSA reviewed and considered the CO's determination that Raytheon's pricing did not create unacceptable risk to the government. Id. at 11.

After completing its corrective action, the agency again made award to Raytheon. After requesting and receiving a debriefing, L-3 filed this protest.

DISCUSSION

The protester raises various arguments in support of its allegation that the agency failed to meaningfully consider the awardee's unbalanced pricing.⁴ For example, the protester asserts that the agency should have "meaningfully considered" the pricing differences identified in the cost/price team's pricing hypothetical and that the agency "blindly accepted" Raytheon's responses. Comments at 2, 5. We have considered all the protester's various arguments and find no basis to sustain the protest.

As a general matter, unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly

⁴ L-3's protest also challenges the agency's evaluation of the small business participation plan, the agency's determination that Raytheon's proposal was superior under the non-cost/price evaluation factors, and the agency's best-value determination. The agency report responded to these allegations, and L-3's comments on that report did not meaningfully dispute the agency's responses. Accordingly, we view L-3 to have abandoned these protest issues. See, e.g., Family Entertainment Services, Inc., d/b/a IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 7 n.5.

overstated or understated. See, e.g., 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. Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 10. Thus, 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); Red River Service Corporation, B-282634, B-282634.2, July 15, 1999, 99-2 CPD ¶ 31 at 2. Our Office will review for reasonableness an agency's determinations regarding unbalanced prices. Semont Travel, Inc., B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3.

Here, the record shows that the cost/price team identified evidence of unbalanced pricing in the awardee's proposal, and that the agency engaged in discussions with the awardee regarding those issues. In response to the agency's concerns, Raytheon provided an explanation of its pricing, stating that the pricing was based on [deleted] and on assumptions it made regarding [deleted]. The CO considered the information presented by the cost/price team and the responses provided by Raytheon, and concluded that Raytheon's responses adequately addressed the issue of unbalanced pricing and that Raytheon's pricing did not create an unacceptable level of risk that the government will pay unreasonably high prices during contract performance.

In our view, the agency has satisfied the FAR requirements regarding Raytheon's pricing variances by reasonably determining that the risks posed to the government were not significant enough to render its proposal unacceptable. We will not disturb an agency's assessment of the risk posed to it by unbalanced pricing when the agency reasonably considers the relevant factors. The fact that the protester disagrees, or relies on a pricing hypothetical posed by the cost/price team under which the awardee's proposal could result in a higher price, does not render the agency's conclusion unreasonable. On the record here, we find the agency's actions unobjectionable.

The protest is denied.

Susan A. Poling
General Counsel