



Comptroller General
of the United States

Washington, D.C. 20548

942135

Decision

Matter of: PHP Healthcare Corporation

File: B-251933

Date: May 13, 1993

Joel R. Feidelman, Esq., James M. Weitzel, Esq., and Anne B. Perry, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Karen Hastie Williams, Esq., and John A. Burkholder, Esq., Crowell & Moring, for ASG Management Company, Inc., an interested party.

Robert D. Hamel, Esq., and Major Bobby G. Henry, Jr., Department of the Army, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Procuring agency in a negotiated procurement for the award of a fixed-price contract provided sufficient detail to allow the General Accounting Office to judge the reasonableness of the agency's cost/price analysis where the record consists of the agency's detailed cost estimate, against which offerors' cost breakdowns and proposed prices were compared, a contemporaneous memorandum of the cost/price analysis of initial proposals, and the contracting officer's statements during the protest that describe the cost/price analysis of best and final offers.

2. A procuring agency's cost/price analysis was adequate in a negotiated procurement for the award of a fixed-price contract that provided for a cost realism analysis where: (1) adequate price competition was received; (2) the contracting officer compared the offerors' proposed prices and estimated costs with each other and the government's detailed cost estimate, and reasonably determined they were realistic; and (3) the protester does not show that any element of the awardee's estimated costs was unrealistic or that the awardee's low price was unreasonable.

DECISION

PHP Healthcare Corporation protests the award of a contract to ASG Management Company, Inc. under request for proposals (RFP) No. DADA10-92-R-0003, issued by the Department of the Army, for the establishment and operation of a primary care

clinic for the uniformed services (PRIMUS) at Fort Bragg, North Carolina. PHP argues that the agency failed to evaluate ASG's allegedly unreasonable and unrealistic low price.

We deny the protest.

The RFP, as amended, contemplated the award of an indefinite quantity, fixed-price contract to establish, furnish, operate and manage the PRIMUS clinic for a 6-month base period and 4 option years.² The contractor will provide the clinic, all professional and non-professional staff, and equipment and supplies necessary to provide medical care at the clinic in accordance with the RFP's detailed statement of work. Offerors were informed as to the requirements concerning the location and operation of the clinic, as well as the numbers, kinds and qualifications of offerors' personnel and staff required.

For each contract performance period, the RFP solicited fixed prices for various contract line items (CLIN). For example, CLIN AA requested monthly prices for the operation of the clinic to include the fixed-clinic-operating costs and 2,000 regular visits per month.³ The other CLIN prices were for various visits beyond the 2,000 regular visits per month and were to be quoted on a per visit basis as follows:

AB	Regular visits (2,001 to 4,500 visits per month)
AC	Regular visits (4,501 to 7,500 visits per month)
AD	Regular visits (7,501 to 9,375 visits per month)
AE	Short visits (1 to 600 visits per month)

¹Portions of the protest record are subject to a General Accounting Office (GAO) protective order to which counsel for PHP and ASG have been admitted. Our decision is based upon protected information and is necessarily general.

²The RFP originally solicited offers for a 1-year base period and 4 option years. The RFP was amended after receipt of initial proposals to reduce the contract base period to 6 months.

³"Regular" visits were defined as visits that potentially involve the full scope of PRIMUS clinic services (i.e., practitioner evaluation, diagnosis and treatment), while "short" visits were patient visits of less resource intensity and less practitioner involvement (i.e., medication renewal or blood pressure screening).

The RFP provided guaranteed minimum and maximum quantities of visits and stated the agency's best estimated quantities per year for each CLIN.

Offerors were informed that award would be made to the responsible offeror whose conforming proposal was the most advantageous to the government, price and other factors considered. The RFP stated the following evaluation factors:

- A. Management and financial capabilities
- B. Approach to satisfying requirements
- C. Quality control/assurance
- D. Marketing plan
- E. Price/cost to the government (including cost breakdown)

Subfactors were stated for each of the technical evaluation factors. Technical evaluation factors A, B and C were stated to be of equal weight, while evaluation factor D was stated to be approximately one-third as important as either factors A, B or C. All of the technical evaluation factors combined were stated to be significantly more important than price.

Regarding price, the RFP provided that the government would evaluate offers by adding the total price of all options to the total price for the basic requirement. Offerors were required to provide a cost breakdown of all proposed prices for the base period and option years.⁴ The RFP also provided:

"Offeror's cost will be evaluated for realism and adequacy. The price will be evaluated using price analysis to determine a fair and reasonable price. The [g]overnment will consider the value of each proposal in terms of the quality offered for the price."

It further provided that:

"Proposals which are unrealistic in terms of technical response or unrealistically low in price, or a particular cost element, will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements. Such proposals may be rejected as unacceptable without further evaluation or discussion."

⁴The RFP provided a suggested format for the cost breakdown.

Certified cost and pricing data was not required to be provided. See Federal Acquisition Regulation (FAR) § 15.804-3.

The Army received 11 offers, including those of PHP and ASG, and determined that 9 offers, including PHP's and ASG's, should be included in the initial competitive range.⁵ Written discussions were conducted, and revisions to proposals received. After the evaluation of the proposal revisions, the Army excluded two other offers from the competitive range while another offer was withdrawn. Best and final offers (BAFO) were requested from the six remaining offerors. The final evaluation results of the top rated offerors were as follows:

	<u>Adjectival rating</u>	<u>Numerical score⁶</u>	<u>Price</u>
ASG	Excellent	818.3	\$20,973,308
Offeror A	Excellent	806.2	22,851,130
Offeror B	Excellent	804.7	28,971,664
PHP	Excellent	802.6	21,073,105

ASG's proposal was selected for award as the most advantageous to the government because ASG's proposal was the highest technically scored and lowest priced offer. The agency expressly found that "ASG's proposed [BAFO] price is determined to be fair and reasonable based on competition, the independent government estimate, an analysis of the offeror's cost proposal and comparison of the proposed price with the price for the same and similar service." Award was made to ASG on December 29, 1992, and this protest followed.

PHP protests that, as reflected by the lack of any contemporaneous BAFO price evaluation documents in the record, the Army improperly did not perform a price analysis of ASG's allegedly unreasonably low BAFO price. In this regard, PHP argues that ASG's significant reduction of its proposed price in its BAFO should have adversely affected ASG's technical evaluation rating in the areas of "technical

⁵PHP is the incumbent PRIMUS clinic contractor at Fort Bragg.

⁶975 points represented a perfect technical score. The adjectival rating and corresponding technical point score ranges were: outstanding: 901-975; excellent: 801-900; satisfactory: 701-800; susceptible: 601-700; and unsatisfactory: 600 or less.

competence and comprehension of the complexity and the risks of the proposed contract."

Where the award of a fixed-price contract is contemplated, the procuring agency is required to perform a price analysis to determine that the proposed prices are fair and reasonable." FAR § 15.805-2 (FAC 90-3); Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6. "Cost realism" is ordinarily not considered in the evaluation of proposals for the award of fixed-price contracts because these contracts place the risk and responsibility of loss upon the contractor. Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. However, an agency may, in its discretion, also provide, as here, for the use of a cost realism analysis in a solicitation for the award of a fixed-price contract for the limited purposes of measuring an offeror's understanding of the solicitation's technical requirements or to assess the risk inherent in an offeror's approach. See Kollsman, a Div. of Sequa Corp., B-251244.4, Apr. 2, 1993, 93-1 CPD ¶ ____; Birch & Davis Assocs., Inc.--Protest and Recon., B-246120.3; B-246120.4, Apr. 20, 1992, 92-1 CPD ¶ 372.

The nature and extent of an agency's cost/price analysis is largely a matter of agency discretion, dependent upon the facts of a particular procurement. Id. The FAR provides a number of price analysis techniques that may be used to determine whether prices are fair and reasonable, including a comparison of prices received with each other and/or with the government estimate. See FAR § 15.805-2. We have found that where, as here, a cost realism analysis of proposals for fixed-price contracts is provided for by the solicitation, an in-depth cost analysis is not required; rather, the comparison of offerors' prices with each other and a comparison of their estimated cost elements with the government estimate is sufficient. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ ____; see also PRC Computer Center, Inc.; On-Line Sys., Inc. et al., 55 Comp. Gen. 60 (1975), 75-2 CPD ¶ 35 (cost realism analysis of proposals for the award of a cost reimbursement contract, which only compared proposed cost elements with the government estimate, was reasonable). The

⁷PHP states that it is not challenging ASG's price as indicative of a "buy-in" or challenging the agency's affirmative determination of ASG's responsibility.

⁸"Price analysis" is a process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit, while a "cost analysis" involves the examination and evaluation of an offeror's separate cost elements and proposed profit. FAR § 15.801.

agency's cost or price analysis is required to be documented. FAR § 15.608(a)(1)

Contrary to PHP's arguments, we find that a proper price/cost analysis of ASG's proposed prices and cost breakdown was performed and documented. Although there is no contemporaneous documentation in the record for the contracting officer's cost/price analysis of the BAFO proposals, the contracting officer, in response to the protest, sufficiently describes the cost/price analysis that was performed and how the contracting officer determined the reasonableness and realism of ASG's proposed BAFO prices to allow us to judge the rationality of the agency's cost/price evaluation determination.

Specifically, the contracting officer states that she, and the agency's contract specialist and cost/price analyst, in evaluating the initial proposals, compared the offerors' prices with each other and against the detailed independent government estimate (IGE),⁹ and that they reviewed the offerors' cost breakdowns in the initial proposals against the solicitation's requirements. The results of this cost/price analysis is recorded in a contemporaneous memorandum that provides, with regard to ASG's proposal, that:

"[the] cost proposal includes all of the elements of cost outlined in the technical evaluation cost breakdown checksheet. Proposed salary rates are in line or greater than the IGE. The review did not reveal any cost realism issues. The fixed cost line item is supported by a cost breakdown."

The contracting officer states that she performed the cost/price analyses of ASG's and other offerors' BAFO price proposals and cost breakdowns, with the assistance of the contract specialist and the contracting branch chief.¹⁰ Specifically, the contracting officer states that she compared ASG's cost breakdowns in its initial and BAFO proposals and found nothing that affected the realism of ASG's

⁹The IGE provides the government's detailed estimate of each of the required cost elements for performance of the PRIMUS clinic contract at Fort Bragg, including burdened direct labor costs (as based upon the government's labor hour calculations) and office rental, utilities and equipment costs.

¹⁰The cost/price analyst who assisted with the price analysis of the offerors' initial proposals retired prior the evaluation of BAFO proposals.

BAFO proposal. The contracting officer noted that a significant amount of ASG's price reduction in its BAFO reflected the change in the base contract period from 1 year to 6 months,¹¹ and that ASG had "no-charged" CLIN AD for the last increment of regular visits in the base period and the last 2 option years. The contracting officer concluded that this no-charge pricing--which ASG has identified as an "aggressive pricing initiative"--was realistic because ASG could recover its investment in its pricing for regular visits in CLINs AA, AB, and AC, and that the additional patient visits would not adversely impact ASG's performance. The contracting officers found ASG's prices were fair and reasonable, and its estimated costs realistic and adequate.

The protester argues that we should disregard or give no weight to the contracting officer's explanation in response to the protest, since it was not prepared prior to award. However, in determining whether an evaluation decision is reasonable and supported, we consider the entire record, including statements and arguments made in response to a protest. See Hydraudyne Sys. and Eng'g B.V., B-241236; B-241236.2, Jan. 30, 1991, 91-1 CPD ¶ 88. We will only find the record of an agency's evaluation or source selection to be inadequate where there is insufficient detail to allow us to judge the rationality of the agency's determination. Id.; cf. U.S. Def. Sys., Inc., B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89 (conclusionary statements in agency's post-protest explanation of its technical evaluation were inadequate). Here, the record--which consists of the contracting officer's description of the cost/price analysis that was performed, along with ASG's price proposal (including a detailed cost breakdown) and the IGE--provides sufficient detail to justify the reasonableness of the agency's cost/price analysis.¹²

From our review of the record, we find that the Army did all that it was required in the way of a cost/price analysis under the RFP and reasonably determined that ASG's proposed price, which is only 4.7 percent lower than PHP's, was fair and reasonable and based on realistic estimated costs. As noted above, the agency prepared a detailed cost estimate for the supplies and services required over the life of the contract, and ASG's estimated costs, as reflected in its

¹¹PHP's BAFO price was also considerably lower than its initial price.

¹²As noted by PHP, the contracting officer is required to document the cost or price evaluation of BAFOs. FAR § 15.608(a)(1). While the Army should have made contemporaneous documentation, it has now provided adequate documentation to satisfy the FAR § 15.608(a)(1) requirements.

cost breakdowns, were compared to the IGE and found to be realistic. Also, in determining that ASG's proposed prices were fair and reasonable, the agency compared the offerors' prices with each other and with the IGE. Particularly given the vigorous price competition for this requirement, we believe this was sufficient to satisfy the solicitation requirements concerning cost realism.¹³ See Servrite Int'l, Ltd., B-241942.3, June 13, 1991, 91-1 CPD ¶ 567.

Despite having access under the GAO protective order to ASG's price and cost documentation and the IGE, PHP does not show that any aspect of ASG's prices was unreasonable or that its estimated costs were unrealistic. While PHP speculates that ASG's cost estimates may not include reasonable staff salaries or that ASG may not have included all the costs required for establishing and equipping the clinic,¹⁴ we find, from our review of ASG's estimated costs, on which ASG's prices were based, that ASG's staff labor costs and clinic and equipment costs were detailed in ASG's cost breakdown supporting its proposed prices, and that these costs are comparable to the government estimates.

PHP claims that ASG's proposed price is per se unrealistic because ASG proposed not to charge the government on CLIN AD for regular visits above 7,500 visits a months in the base year and for the third and fourth option years. As noted above, the contracting officer states that she evaluated ASG's proposed no-charge "price initiative" for these CLINs and determined that ASG would have recovered its investment in the first 7,500 regular visits and that the additional unpriced visits would not adversely impact ASG's performance. PHP, while contending that ASG's zero pricing for these CLINs was unrealistic, does not allege that PHP's cost breakdown does not accurately and realistically reflect the costs associated with the regular visits.

Furthermore, we see no basis to challenge the agency's price reasonableness determination, simply because ASG chose to no-charge the estimated regular visits above 7,500 visits per month. A responsible offeror for a

¹³Here, the RFP, while providing for the performance of a cost or price analysis, did not specify the manner or degree of analysis to which proposals would be subjected.

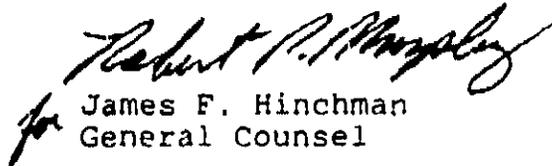
¹⁴PHP does not particularize with any analysis how these cost elements were unrealistic, despite being given access to ASG's cost proposals and the IGE.

¹⁵While the record reflects differences in ASG's and PHP's pricing, other than ASG's no-charge pricing, PHP does not
(continued...)

fixed-price contract may offer below-cost pricing; an agency's concern, in making a price reasonableness determination prior to the award of a fixed-price contract, focuses primarily on whether the offered prices are higher than warranted based on the offeror's costs and are used in negotiating reasonable prices.¹⁵ Family Realty, supra.

In sum, we find that the Army performed a proper cost/price analysis, as contemplated by the RFP, and reasonably determined that ASG's estimated costs were realistic and its proposed prices fair and reasonable. Since the agency reasonably did not find ASG's cost/pricing to be unreasonable or unrealistic, it properly did not view ASG's prices as reflective of any lack of technical understanding or as posing any performance risk.

The protest is denied."


for James F. Hinchman
General Counsel

¹⁵(...continued)
challenge these differences or assert that ASG's prices are unreasonable because of them.

¹⁶As noted above, PHP does not challenge the agency's affirmative determination of ASG's responsibility.

¹⁷PHP initially protested that the source selection of the low priced, highest technically rated offeror was improperly based on "rote" application of the "best value" evaluation scheme. Since the agency explained the basis of its selection in its report on the protest and PHP did not respond to the agency's contentions, we assume that it has abandoned this argument. T.M. Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD 573.