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# Decision

**Matter of:** CORMAC Corporation

**File:** B-416160; B-416160.2; B-416160.4

**Date:** June 26, 2018

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David B. Dixon, Esq., and Meghan D. Doherty, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Next Phase Solutions and Services, Inc., the intervenor.

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Noah B. Bleicher, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging agency's evaluation of protester's proposed level of effort is denied where protester's staffing level stemmed from its unreasonable interpretation of the solicitation, and the assignment of a deficiency on this basis was unobjectionable.

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## DECISION

CORMAC Corporation, a woman-owned small business (WOSB) of Columbia, Maryland, protests the issuance of a task order to Next Phase Solutions and Services, Inc., also of Columbia, Maryland, pursuant to task order request for proposals (TORP) No. 171561, which was issued by the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), for master data management enterprise services. CORMAC contends that the agency unreasonably evaluated its proposed staffing level.

We deny the protest.

## BACKGROUND

CMS issued the final version of the TORP on September 22, 2017, to certain small business contract holders of its multiple-award Strategic Partners Acquisition Readiness

Contract (SPARC), pursuant to the procedures set forth at Federal Acquisition Regulation (FAR) subpart 16.5.<sup>1</sup> Agency Report (AR), Tab 1h, Conformed TORP, at 1. The TORP contemplated the issuance of a cost-plus-award-fee task order, for a 10-month base period and four option years, for a contractor to design, build, maintain, manage, and administer master data management (MDM) enterprise services to meet the mission of CMS. TORP, attach. 2, Terms and Conditions, at 1, 8. Pursuant to the TORP, CMS would issue the order to the firm whose proposal provided the best overall value to the government, based on a consideration of cost and the following non-cost factors:<sup>2</sup> technical understanding and approach; personnel qualifications and management plan; past performance; and section 508 compliance.<sup>3</sup> TORP at 11.

This protest involves the agency's evaluation under the personnel qualifications and management plan factor. With respect to the management plan aspect of this factor, the TORP instructed offerors to submit a staffing plan that identified the labor categories and hours being proposed for each of the TORP's eight line items. Id. at 4. CMS would evaluate the staffing plan by assessing the extent to which the proposed labor mix reflected an accurate understanding of the technical requirements and managerial duties delineated in the TORP's statement of work (SOW), among other considerations. Id. at 12. The TORP expressly advised that the evaluation would take into account the number of hours proposed to accomplish the MDM effort. Id.

Relevant to this protest is the level of effort necessary to perform the task order. In this respect, the SOW identified both a primary scope of work, which encompassed the oversight and management of enterprise services supporting MDM (detailed in SOW § C.6), as well as optional tasks, which included additional MDM development, stakeholder integrations, and off-cycle adaptive enhancements to enterprise MDM (SOW § C.7). TORP, attach. 1, SOW, at 17-33. The TORP's contract line item number (CLIN) structure paralleled the SOW: CLIN X001 contained the MDM operations and maintenance (O&M) tasks that expressly corresponded to section C.6 of the SOW, and CLINs X002-X008 contained the various optional tasks that corresponded to section C.7 of the SOW. TORP, attach. 2, Terms and Conditions, at 1-2.

With respect to the optional CLINs, the TORP's pricing table identified an estimated annual level of effort of 57,000 labor hours, combined, for performance of the optional

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<sup>1</sup> Specifically, the TORP was set aside for WOSBs, historically underutilized business zone small businesses, and service-disabled veteran-owned small businesses. TORP at 1.

<sup>2</sup> The non-cost factors, which are identified in descending order of importance, when combined, were "significantly more important" than cost. TORP at 11.

<sup>3</sup> Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

CLINs.<sup>4</sup> Id. at 2-6. The pricing table did not provide an estimate of the labor hours for the O&M CLIN, which was the bulk of the work, based on the SOW. See id. However, as explained more fully below, the agency's response to an inquiry from an offeror, as memorialized in the TORP's questions and answers, estimated the MDM O&M effort "based upon historical trends, to be roughly 85,000-95,000 hours annually." TORP, attach. 6, Questions and Answers (Q&As), at 19-20 (Question No. 93).

CMS received proposals from 12 offerors, including CORMAC and Next Phase. Contracting Officer's Statement (COS) at 4. A technical evaluation panel (TEP) reviewed technical proposals and prepared a consensus report detailing its evaluation findings, which included the identification of strengths, weaknesses, and deficiencies, as well as the assignment of adjectival ratings. AR, Tab 4, TEP Report, at 1-79. With respect to CORMAC's proposal, the TEP identified a material deficiency under the personnel qualifications and management plan factor due to CORMAC's proposed staffing levels.<sup>5</sup> Specifically, the evaluators assessed that CORMAC proposed "an unreasonably low amount of resources" and, in particular, did "not bid to the anticipated volume of work for the O&M CLIN as indicated in the solicitation [Q&As]." Id. at 34. The TEP concluded that CORMAC would "not be able to maintain the current system with the staffing mix proposed, and the Government [would] be at greater risk for unsuccessful completion of the volume of work required by the O&M tasks under the SOW." Id. at 35. In determining that the deficiency rendered CORMAC's \$30,847,119 proposal unacceptable, the TEP explained as follows:

[CORMAC's] technical proposal, though receiving multiple strength merit findings, is determined to be technically unacceptable. The offeror proposes a level of effort (LOE) across all CLINs equal to the LOE the Government anticipates for just the O&M (CLIN X001) tasks. Said differently, the offeror shows a total number across all CLINs X001-X008 that would indicate they believe they can perform all of these CLINs on the existing LOE for [O&M], which leads the Government to believe the offeror added the FTEs [full time employees] LOE across all CLINs to be comparable to the required LOE for only the O&M CLIN (CLIN X001). A total hourly LOE of [DELETED] allocated to O&M activities, which is unrealistically low under the LOE provided by the Government in the Q&A's #93, with an associated LOE of 85,000 to 95,000 hours annually for

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<sup>4</sup> The 57,000 hours is based on the estimates identified for the option periods, which encompassed full calendar years, for CLINs X002-X008. See TORP, attach. 2, Terms and Conditions, at 2-6.

<sup>5</sup> The TEP also assigned CORMAC's proposal several weaknesses, including a significant weaknesses under the technical understanding and approach factor based on the firm's proposed transition-in plan. AR, Tab 4, TEP Report, at 32-33. CORMAC challenged this significant weakness, Supp. Protest, Mar. 26, 2018, at 5-6, but later withdrew the protest ground. Comments at 2.

CLIN X001 alone, and does not support the offeror's technical approach. Therefore, the offeror is deficient [in] adequately bidding to the requirements, and not proposing to the LOE indicated by the solicitation indicated by question #93 of the Q[&]As.

Id. at 7.

CMS ultimately determined that Next Phase's proposal offered the best value to the agency, and CMS issued the firm the task order for \$74,760,691 on February 27. AR, Tab 5, Source Selection Decision, at 24; Tab 6, Task Order, at 1, 7. Following receipt of a written debriefing, CORMAC protested.<sup>6</sup>

## DISCUSSION

CORMAC challenges the deficiency assigned to its proposal under the personnel qualifications and management plan factor. CORMAC maintains that it proposed a sufficient level of effort that was in line with its interpretation of the solicitation's staffing estimates. Supp. Protest, Mar. 26, 2018, at 2-4; Comments at 10-11. CORMAC further asserts that to the extent CMS's interpretation of the expected level of effort under the TORP is reasonable, then the TORP contained an ambiguity. Supp. Protest, Mar. 26, 2018, at 3; Comments at 13-14. Following our review of the record, we are provided no basis to sustain the protest.<sup>7</sup>

By way of additional background, the task order here is a follow-on requirement to CMS's enterprise data services contract (EDSC). The EDSC effort encompassed three "separate and distinct bodies of work," including MDM tasks, along with enterprise portal tasks and business rules enterprise services tasks. AR, Tab 10, Dec. of TEP Chair, ¶ 8. The task order at issue here is the follow-on effort for the MDM aspects of EDSC. Id.

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<sup>6</sup> The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery, indefinite-quantity contracts that were awarded under the authority of title 41 of the U.S. Code. See 41 U.S.C. § 4106(f)(1)(B).

<sup>7</sup> We have considered all of CORMAC's arguments, and find that none provides a basis to sustain the protest. In addition, CORMAC raised additional protest grounds that are no longer under review. For example, CORMAC contended generally that Next Phase had an organizational conflict of interest solely due to its teaming partner's performance on the predecessor contract. Protest, Mar. 19, 2018 at 12-14. Our Office advised the parties during a conference call that this allegation, without more, was legally insufficient and would not be considered further. See 4 C.F.R. § 21.5(f). Similarly, in a supplemental filing, CORMAC alleged unequal treatment in the evaluation of proposals, but the protester subsequently withdrew this allegation after the submission of the agency's report. Supp. Protest, Apr. 16, 2018, at 1-5; see Comments at 2 (withdrawing protest grounds).

According to the agency, the MDM O&M work was spread across multiple CLINs on the predecessor contract, whereas here, the MDM O&M tasks are covered by one CLIN. Id.

In addition, as stated above, the task order also included optional work--separate from the O&M scope--delineated under seven different CLINs. TORP, attach. 2, Terms and Conditions, at 1-2. For these CLINs, the TORP contained labor hour estimates that totaled 57,000 hours combined. Id. at 2-6. The agency maintains that it did not include any staffing estimate in the pricing table for the O&M CLIN because it expected offerors to propose their own technical solutions, with efficiencies, to meet the requirements and did not want to lock offerors in to a set LOE. AR, Tab 10, Dec. of TEP Chair, ¶ 6. Nevertheless, after offerors specifically requested historical staffing information from the EDSC effort, CMS provided additional relevant information as part of its questions and answers with industry, which were incorporated as an attachment to the solicitation.

Specifically, in question 75, an offeror asked “[h]ow many contract personnel are supporting MDM?” TORP, attach. 6, Q&As, at 17. The agency responded that there were “[a]pproximately 45 between full and part time FTEs.” Id.

Next, in question 93, an offeror asked whether CMS would be able “to provide the historical level of effort for MDM Development and MDM O&M?” Id. at 19. The agency responded that for this task order, the “development tasks are all itemized in the ‘optional tasks,’ but the Government estimates the O&M, based upon historical trends, to be roughly 85,000-95,000 hours annually,” which correlated to about 45 FTEs. Id. at 19-20.

An offeror subsequently sought clarification in question 174, inquiring as follows:

In Q&A 75, it notes that approximately 45 contractor personnel are supporting MDM. My question is whether ‘MDM,’ in this case, means the entire Enterprise MDM effort or just the Master Data Management task area under the Enterprise MDM scope (and subsequently not inclusive of Governance, Oversight, and Management and Enterprise Data Services)?

TORP, attach. 6A, Additional Q&As, at 3-4. The agency responded: “Approx [sic] 45 FTEs is just the Master Data Management task area under the Enterprise MDM scope.” Id. at 3.

In its proposal, CORMAC proposed a total level effort of [DELETED] labor hours (or [DELETED] FTEs) across all eight CLINs.<sup>8</sup> AR, Tab 2, CORMAC Technical Proposal,

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<sup>8</sup> Because the task order’s base period of performance did not encompass a full calendar year, this decision, consistent with the agency’s evaluation materials, focuses on CORMAC’s option year 1 staffing levels. In addition, per CORMAC’s proposal, an  
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app. A, Staffing Plan, at A-3. More specifically, for the optional CLINs, CORMAC proposed [DELETED] labor hours ([DELETED] FTEs) combined, and, of significance here, for the MDM O&M CLIN, CORMAC proposed [DELETED] labor hours ([DELETED] FTEs). Id.

In its various protest pleadings, CORMAC explains why it believes its staffing levels were consistent with the estimates provided in the TORP, including the question and answers. According to the protester, the answer to question 75 “confirmed information CORMAC obtained from a teammate” that the “overall” level of effort for the predecessor contract was around [DELETED] FTEs and the O&M effort was only “about [DELETED]” of those FTEs. Protest, Mar. 19, 2018, at 13.

CORMAC then explains that the answer to question 93 “introduced confusion” because it was “inconsistent with all of the preceding information.” Id.; Comments at 7. Specifically, according to CORMAC, 45 FTEs for the O&M tasks alone (i.e., 85,000 to 95,000 labor hours), as the answer indicated, would be a higher level of effort than the total predecessor contract, which CORMAC understood to include “substantial” development work. Comments at 7; id.; attach. A, Dec. of CORMAC Vice President, ¶¶ 6. In other words, because CORMAC considered the effort required under the TORP to be “broadly similar to the EDSC MDM work,” the firm was skeptical that CMS actually anticipated around 45 FTEs for the “less labor-intensive” O&M work. Comments at 8-9.

CORMAC claims that the answer to question 174 “resolved the uncertainty” following question 93. Supp. Comments at 8. According to CORMAC:

[T]he answer . . . confirmed that less than 45 FTEs were performing this requirement under the preceding contract; so that knowledgeable offerors, aware that the new requirement was broadly similar to the preceding contract, would know that the O&M work could not require 85,000-95,000 hours annually.

Protest, Mar. 19, 2018, at 13. In this respect, CORMAC apparently interpreted the answer to question 174 to have corroborated its understanding that the total level of effort for the entire task order (MDM development and O&M) was around [DELETED] FTEs. Comments, attach. A, Dec. of CORMAC Vice President, ¶¶ 11, 16.

Thus, CORMAC argues that the staffing deficiency was unreasonably assigned because, in its view as a “knowledgeable offeror[],” the TORP did not actually contemplate the 85,000 to 95,000 hours annually for the O&M CLIN, as had been stated in the answer to question 93. See Protest, Mar. 19, 2018, at 13. In this respect, “based upon its previous and current work at CMS,” as well as its “teammate’s knowledge” of

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FTE equaled 1,880 labor hours. See AR, Tab 2, CORMAC Technical Proposal, app. A, Staffing Plan, at A-3.

the current level of effort for MDM O&M, the protester asserts that [DELETED] FTEs was sufficient to perform the O&M tasks. Supp. Protest, Mar. 26, 2018, at 4. CORMAC also insists that the agency apparently was combining the EDSC development work and EDSC O&M work into the task order's O&M CLIN, without disclosing that to offerors. Comments at 5.

In response, CMS maintains that "the agency meant what it said" when it identified 85,000-95,000 labor hours (approximately 45 FTEs) as a "reasonable benchmark" to assess offerors' levels of effort for the O&M CLIN. Memorandum of Law (MOL) at 12-13. According to the agency, CORMAC "evidently received bad information" from its teammate when it assumed that only [DELETED] FTEs supported the predecessor MDM O&M effort. COS at 7. The agency further counters that CORMAC's interpretation of the solicitation's staffing estimates was not reasonable, and, to the extent CORMAC was confused by the questions and answers, it should have raised those concerns prior to submitting its proposal. MOL at 18.

In reviewing protests challenging the evaluation of quotations or proposals in a task order competition, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. Solutions by Design Alliant-JV, LLC, B-408058.4, Sept. 30, 2013, 2013 CPD ¶ 251 at 7. A protester's disagreement with an agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. In addition, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Solutions by Design Alliant-JV, LLC, supra, at 8.

Here, the plain language of the solicitation unmistakably contradicts the protester's interpretation of the TORP's staffing estimates. In this respect, regardless of what CORMAC thought it understood about the staffing levels on the incumbent effort, questions 75, 93, and 174 unequivocally informed offerors that, for this task order, the agency estimated 85,000-95,000 labor hours (approximately 45 FTEs) for the O&M scope of work (in addition to the 57,000 labor hours for optional tasks). See TORP, attach. 6, Q&As, at 17, 19-20; attach. 6A, Additional Q&As, at 3-4. That CORMAC's "teammate's intel" was at odds with the information disclosed in the questions and answers does not demonstrate that the agency's interpretation of the TORP was unreasonable. See Comments at 7. Rather, as the agency explains, CORMAC was incorrect; the firm mistakenly assumed that the predecessor effort utilized [DELETED] FTEs for MDM O&M work. COS at 7; Supp. MOL at 8.

We also see no support for CORMAC's repeated contention that CMS was actually combining MDM development work and O&M tasks into the O&M CLIN without advising offerors to this effect. See Comments at 9, 13; Supp. Comments at 5-7. In this regard, the unambiguous answer to question 93 explicitly stated that development tasks were

covered by the optional CLINs and not combined with the O&M CLIN. See TORP, attach. 6, Q&As, at 19. In response to the protest, the agency consistently confirms that it “had not lumped development and O&M into the 85,000-95,000 hour figure.” E.g., Supp. MOL at 9. As such, the protester’s contention is inaccurate and provides no basis to sustain the protest.

In addition, it remains unclear how the answer to question 174 confirmed CORMAC’s interpretation of the TORP’s staffing needs, as the protester represents. As described above, the questioner was merely seeking clarity as to whether the 45 FTE figure (from question 75) encompassed all of the work under section C.6 of the TORP’s SOW, which also included the governance, oversight, and management tasks (SOW § C.6.1) and enterprise data services tasks (SOW § C.6.2) cited by the questioner, in addition to the primary MDM tasks (SOW § C.6.3.1). See TORP, attach. 1, SOW, at 17-29; attach 6A, Additional Q&As, at 3-4. The agency’s response--that 45 FTEs covered just the MDM tasks--would appear to suggest that an even higher level of effort was anticipated for CLIN X001, which covered all of section 6 of the SOW.<sup>9</sup> See TORP, attach. 2, Terms and Conditions, at 1. In our view, question 174 provides no support to the protester’s interpretation that the 45 FTE figure also encompassed the optional development tasks. Rather, the protester’s interpretation reflects an unreasonable reading of the TORP.

Regardless, to the extent CORMAC’s understanding of the staffing levels on the predecessor effort were at odds with the information provided by CMS in the questions and answers, then the protester had multiple opportunities to raise its confusion with the agency prior to submitting a proposal. Instead, CORMAC chose to “rely on faulty intelligence from a ‘teammate’ even in the face of clear statements from the agency to

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<sup>9</sup> We note, for the record, that the agency’s interpretation of question 174 appears to be in error. In this respect, the chairperson of the TEP “assumed” that the reference to enterprise MDM was to the enterprise MDM task under the predecessor EDSC--even though the TORP here was titled Enterprise MDM--and that the references to governance, oversight, and management and enterprise data services were to the “other personnel supporting other shared services tasks on EDSC”--even though tasks in these areas were contemplated under this SOW. See AR, Tab 10, Dec. of TEP Chair, ¶ 11. It remains unclear why the TEP chairperson interpreted the question as he did; a plain reading of the question suggests that the questioner simply was asking whether the 45 FTE estimate covered the entirety of the enterprise MDM effort or only the SOW’s MDM tasks specifically. See TORP, attach 6A, Additional Q&As, at 3-4. Nevertheless, because the answer to question 174 suggested a staffing level higher than the 45 FTEs identified in questions 75 and 93 for CLIN X001, and recognizing that CORMAC proposed [DELETED] percent fewer FTEs for the CLIN, the protester was not prejudiced by any mistake in the agency’s answer to question 174. As such, the agency’s seemingly flawed interpretation of the question does not provide a basis to sustain the protest. See Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶ 20 at 7 (explaining that competitive prejudice is an essential element of a viable protest).

the contrary.” See MOL at 8. Rather than simply disregard CMS’s answer to question 93, as CORMAC’s interpretation requires, we agree with the agency that the protester should have sought clarity regarding what it believed to be an inconsistency prior to submitting its proposal. The protester cannot now rely on its flawed assessment of the level of effort on the prior contract to establish that the TORP was inconsistent and that the agency, consequently, misevaluated its staffing proposal.<sup>10</sup>

In conclusion, the record shows that CORMAC proposed, without sufficient explanation, around [DELETED] percent fewer labor hours than CMS estimated would be appropriate for the MDM O&M tasks.<sup>11</sup> See MOL at 15. We have no reason to question the assignment of a deficiency on this basis. In this regard, while CORMAC proposed certain efficiencies for task order performance, the protester itself represents that its staffing levels were not the result of its “streamlining of the work,” but rather stemmed from its understanding of the level of effort contemplated by the TORP.<sup>12</sup> Supp. Protest, Mar. 26, 2018, at 4. As concluded above, CORMAC’s understanding was faulty and contradicted by the plain language of the TORP. On this record, the deficiency, which resulted in CORMAC’s proposal being deemed unacceptable and ineligible for award, was unobjectionable.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>10</sup> Indeed, even if we were to accept that the question and answers resulted in an ambiguity in the TORP—a conclusion contradicted by the record—where an agency’s response to offerors’ questions creates a direct conflict with the terms of the solicitation, an offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous terms in the solicitation and then expect relief when the agency does not act in the manner assumed. See Mevacon-NASCO JV; Encanto Facility Servs., LLC, B-414329 et al., May 11, 2017, 2017 CPD ¶ 144 at 16. In this respect, any ambiguity to CORMAC would have been patent, since the protester asserts that the alleged discrepancy manifested in CMS’s answer to question 93, i.e., it was apparent at that juncture. Thus, a protest on that basis would have had to have been filed prior to proposal submissions. See Optimal Solutions & Techs., supra.

<sup>11</sup> Indeed, CORMAC provided more justification for its proposed level of effort in its protest pleadings, e.g., Comments at 8, then in its entire technical proposal. See AR, Tab 2, CORMAC Technical Proposal, at 1-197.

<sup>12</sup> Notably, CORMAC’s proposed level of effort for CLIN X001 was the lowest among all offerors, and only two other offerors were found deficient due to their proposed levels of effort. COS at 7.