



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: M7 Aerospace, LLC

File: B-415252.4; B-415252.5

Date: November 9, 2018

James J. McCullough, Esq., Anayansi Rodriguez, Esq., and Michael J. Anstett, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.
Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., Kirsten W. Konar, Esq., and Tamara Droubi, Esq., Vedder Price, P.C., for URS Federal Services, Inc., the intervenor.
Erika L. Whelan Retta, Esq., Alexis J. Bernstein, Esq., and Nicole R. Fincham, Esq., Department of the Air Force, for the agency.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's price realism evaluation of the awardee's proposal is denied where the agency's evaluation was reasonable, adequately documented, and in accordance with the terms of the solicitation.
 2. Protest alleging that the awardee, the incumbent contractor, based elements of its proposal on access to non-public information is denied where the record does not show that the awardee relied on information other than general knowledge obtained in performance of the incumbent requirements or publically available information.
 3. Protest alleging that the agency engaged in misleading discussions with the protester is denied where the record shows that the agency's discussion questions were not misleading and the changes made by the protester to its proposal were the result of its independent business judgments.
-

DECISION

M7 Aerospace, LLC, of San Antonio, Texas, protests the award of a contract to URS Federal Services, Inc., of Germantown, Maryland, under request for proposals (RFP) No. FA8131-16-R-0002, which was issued by the Department of the Air Force, for contractor logistics support services for the Air Force's C-26 aircraft fleet. M7 challenges the agency's price realism and technical risk evaluations, alleges that the

awardee had an unfair advantage based on its unequal access to non-public information, and that the agency engaged in misleading discussions.

We deny the protest.

BACKGROUND

The RFP, which was issued by the Air Force on April 26, 2016, sought proposals for contractor logistics support for the Air Force's C-26 aircraft fleet, including all support required for operating and maintaining the aircraft, aircraft subsystems and support equipment. RFP, Performance Work Statement (PWS), at 5.¹ The C-26 aircraft are modified as intelligence, surveillance, and reconnaissance support (ISR) aircraft, and operate both within and outside of the continental United States. Id. The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity contract, with a base year, seven 1-year options, and two 1-year incentive options. RFP at 5.² The minimum contract value is \$750,000, and the maximum contract value is \$602,790,000. Id. at 1. The RFP included 14 primary contract line item numbers (CLIN) covering the anticipated support services.

Under CLIN X001, Base Operations, the contractor will provide all labor necessary for maintenance support of the C-26 aircraft fleet, which currently consists of 11 planes based at 11 main operating bases (MOBs). Offerors were to propose fixed monthly prices to support a minimum of one aircraft at each of the following MOBs: Fresno Air National Guard Base (ANGB), California; Clarksburg, West Virginia; Kirtland Air Force Base (AFB), Albuquerque, New Mexico; Meridian, Mississippi; Ellington Field ANGB, Houston, Texas; Fairchild AFB, Spokane, Washington; Tucson, Arizona; Madison, Wisconsin; and Montgomery, Alabama. Id. at 5. For the eleventh MOB, located in San Juan, Puerto Rico, the RFP required offerors to propose separate fixed monthly prices for supporting 1 to 3 aircraft, and 4 to 6 aircraft. Id. The RFP provided that the Air Force reserved the right to add aircraft or sites, subject to negotiations with the contractor, or to reduce aircraft or sites, subject to the termination for convenience requirements of Federal Acquisition Regulation (FAR) clause 52.212-4(l). Id. at 3.

Under CLIN X002, Flying Hours, the contractor will provide all items necessary for maintenance support, excluding labor, including replenishment of inventories, for the C-26 aircraft. Id. at 6. Offerors were to propose a fixed rate per flying hour up to the maximum of 55 hours a month. Id. Flying hours above the 55 hour maximum will be covered under CLIN X007, Over and Above. Id. The RFP provided that the Air Force

¹ The RFP was amended five times; references herein are to the RFP as amended. Additionally, references herein to page numbers are to the Bates numbering provided by the agency in its agency report (AR).

² The requirements for earning the incentive options are set forth in RFP, attach. No. 3, Incentive Options Plan.

or contractor reserves the right to renegotiate the flying hour rate if the actual average flying hours vary by 50 percent or more from the PWS's utilization rates for more than six consecutive months. Id. at 3.

Under CLIN X003, Paint, the contractor will strip and repaint the aircraft and ISR pods based on a five year paint cycle or as otherwise directed by the Air Force. Id. at 6. Under CLINs X004, Engine Core Zone Inspection (CZI), and X005, Engine Hot Section Inspection (HSI), the contractor will conduct CZIs and HSIs at Federal Aviation Administration (FAA) approved facilities. Id. Under CLIN X006, Propeller Overhaul, the contractor will overhaul propeller assemblies in accordance with the propeller manufacturer's approved methods, practices, and procedures. Id.

Under CLIN X007, Over and Above, the contractor, when directed by the Air Force, will provide maintenance and support for the C-26 aircraft, to include all labor and materials that are not included in the scope and prices of other CLINs. Id. Offerors were to propose composite fixed, fully-burdened hourly labor rates for aircraft maintenance, aircraft heavy maintenance, emergency field team, and air crew labor. Id. Additionally, offerors were to propose a material and subcontract markup factor to include all material and subcontracting overhead and profit. Id. The Air Force and contractor will negotiate fixed prices for over and above work. Id.

Under CLIN X008, Travel and Per Diem, the contractor will be reimbursed for allowable travel and per diem costs. Id. Under CLIN X009, Deployment/Temporary Duty (TDY) the contractor will support world-wide deployments in accordance with the contractor's deployment plan and as directed by the agency, including the provision of all labor, materials, components, and support equipment. Id. at 7. The parties will negotiate a fixed price for the support provided under the CLIN, with the exception that flight hours are to be billed under CLIN X002. Id. Additionally, because personnel will be deploying from a MOB, the base labor charged under the deployment/TDY CLIN will be decreased by the amount paid for labor under the base operations sub-CLIN for the applicable MOB during the deployment period. Id.

Under CLIN X010, Technical and Engineering (T&E) Services, the contractor will provide T&E support for C-26 aircraft fleet, including data, tools, facilities, laboratories, and indirect materials, to accomplish the review, evaluation, and development of solutions of engineering and technical problems pertaining to the operation, installation, design, maintenance, logistical support, modifications, tear-down analysis, and repair of the aircraft and components. Id. The parties will negotiate a fixed price for each defined engineering assignment. Id. Offerors were to propose two composite fixed hourly rates, inclusive of all direct and indirect personnel compensation, for technical order development, and all other engineering support. Id.

Under CLIN X011, Data, the contractor is to provide a number of electronic reports; this CLIN was not separately priced. Id. Under CLINs X012, Phase-out, and X013, Phase-in, the contractor is to provide phase-in and phase out services for a period of 90 days, respectively. Id. at 8. The offeror was to propose fixed monthly prices for these

services. Id. Under CLIN X014, Training, the contractor will support aircraft maintenance training for government personnel as directed by the agency. Id. A fixed price will be negotiated by the parties for each occurrence. Id.

Award was to be on the basis of a best-value tradeoff considering technical risk, past performance, and price among those offerors who were found to be technically acceptable. RFP, attach. No. 8, Evaluation Factors for Award, at 1. Technical acceptability was a prerequisite to the best-value analysis and potential trade-off. Id. at 3. With respect to the remaining factors, technical risk and past performance were equal, the two factors individually were more important than price, and the two factors, when combined, were significantly more important than price. Id. The price factor is of paramount relevance to the issues presented in this protest.³

Under the price factor, the RFP established that the Air Force would evaluate price for reasonableness, balance, and realism, and calculate a total evaluated price (TEP). Id. at 11. Relevant to the issues in the protest, the RFP provided that the agency would review proposed pricing for realism to ensure adequate understanding of the requirement to further ensure proposed pricing does not pose a risk to performance. Id. The RFP further provided that the agency would evaluate all of an offeror's explanations for any reduction in proposed pricing based on a corporate or management decision, such as reduced proposed profit, volume or location discounts, and indirect rate reductions. Id. at 17.

For purposes of calculating the TEP, the RFP included detailed instructions for calculating the evaluated price for each individual CLIN that, when summed, would result in the TEP. For CLIN X001, Base Operations Support, the proposed unit price for each site was to be multiplied by the quantities in the RFP's estimated quantities table (EQT), with the resulting prices for each MOB being summed for an aggregate CLIN price. Id. at 13. With respect to CLINs X002, Flying Hours; X003, Paint; X004, Engine CZI; X005 Engine HSI; X006, Propeller Overhaul; X012, Phase-out; and X013, Phase-in, the agency was to multiply the proposed fixed unit prices and the quantities in the EQT for the respective CLINs. Id. at 13-14. For CLINs X007, Over & Above, and X010, T&E Support, the Air Force was to multiply the proposed fixed labor hour composite rates by the labor hour quantities listed in the EQT. Id. The TEP would not include any prices associated with CLINs X008 Travel & Per Diem, X009, Deployments/TDY, X011, Data, or X014, Training. Id. at 14.

Additionally, the RFP provided that the Air Force was to review the offeror's estimating methodology and basis of estimate on which the proposed pricing was based. Id. at 17.

³ M7's protest challenging the Air Force's evaluation of URS' proposal under the technical risk factor is primarily based on URS' alleged unrealistically low proposed price. As explained below, because we find no basis on which to sustain M7's challenge to the agency's price realism evaluation, we similarly find no basis to sustain its derivative technical risk allegations.

The Air Force was to also review information regarding the offeror's estimating, accounting, and purchasing systems, including information pertaining to the offeror's Disclosure Statement and Cost Accounting System compliance in preparation of the proposal. Id.

The Air Force initially received seven proposals in response to the RFP, including from M7 and URS, the incumbent. Contracting Officer's Statement of Fact at 6. The agency on two prior occasions selected M7's proposal for award. In both cases, URS filed a protest with our Office, and the agency subsequently took corrective action in response to the protests. URS Fed. Servs., Inc., B-415252.2, B-415252.3, Dec. 19, 2017 (unpublished decision); URS Fed. Servs., Inc., B-415252, Oct. 11, 2017 (unpublished decision). Relevant here, in the most recent preceding round of the procurement, M7 received the award based on a TEP of \$93,243,954, while URS had proposed a TEP of \$108,655,078.

In the most recent round of corrective action, the Air Force initially established a competitive range of four, but one offeror subsequently withdrew. AR, Tab 29, Source Selection Decision, at 2. The agency proceeded to engage in discussions with the remaining competitive range offerors, and requested final revised proposals. The Air Force evaluated the final proposals of M7 and URS as follows:

	URS	M7
Technical	Acceptable	Acceptable
Technical Risk	Low	Low
Past Performance	Satisfactory	Satisfactory
TEP	\$91,218,499	\$112,103,630

Id. at 6.

The Source Selection Authority (SSA) reviewed and concurred with the lower-level evaluators' findings and ratings, and then conducted a comparative assessment of the proposals. With respect to technical, the SSA agreed that both the M7 and URS proposals were technically acceptable. Id. at 7. With respect to technical risk, the SSA concluded that neither M7 nor URS had any evaluated weaknesses, and thus both proposals warranted the same low risk rating. Id. at 8. With respect to past performance, the SSA concluded that both offerors warranted a satisfactory confidence rating, which was the highest possible rating. The SSA further noted the RFP's provision that "[w]ith regards to the best value decision, all offerors rated as 'Satisfactory Confidence' will be considered equal for the Past Performance factor." Id. at 11 (quoting RFP, attach. No. 8, Evaluation Factors for Award, at 7). Because both M7 and URS were technically equal under the non-price factors, the determinative factor was price, and URS' proposal was selected as offering the best value to the government. Id. at 13-14. Following a debriefing, M7 filed this protest with our Office.

DISCUSSION

M7 challenges the adequacy of the Air Force's price realism evaluation of URS' proposal. Specifically, the protester argues that the agency failed to conduct and adequately document a reasonable price realism evaluation where it failed to consider the performance related risks associated with the awardee's allegedly unrealistic proposed price. Alternatively, M7 alleges that URS unfairly relied on sensitive, non-public information obtained through the performance of the incumbent requirements or by other improper means to substantiate certain of its proposed price reductions. The protester contends that the agency failed to mitigate the consequences of URS's unequal access to information. Additionally, M7 alleges that the agency engaged in misleading discussions when it encouraged M7 to increase its proposed price, notwithstanding its acceptance of URS' substantially lower TEP. For the reasons that follow we find no basis on which to sustain the protest.⁴

Price Realism

M7 first challenges the adequacy of the agency's price realism evaluation of URS' proposal. Specifically, the protester alleges that the record is devoid of any meaningful analysis of URS' proposed price reductions, and the agency failed to critically evaluate the justifications provided by URS. In this regard, the protester primarily focuses on the agency's failure to critically analyze URS' proposed reductions in staffing under CLIN X001 for base operations, and its restructuring of its [DELETED]. For the reasons that follow, we find that the Air Force's evaluation was reasonable, adequately documented, and in accordance with the terms of the RFP. Thus, we find no basis on which to sustain the protest.

Where, as here, an RFP contemplates the award of a fixed-price contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring offerors' understanding of the requirements or to assess the risk inherent in an offeror's

⁴ M7 raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that they do not provide a basis on which to sustain the protest. For example, M7 alleges that the Air Force failed to adequately document its assessment that URS' pricing was balanced. See Protest at 22 n.3; M7 Comments at 12 n.7. Pursuant to FAR § 15.404-1(g)(1), unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. As a result, the concern with unbalanced pricing is that the government will ultimately pay unreasonably high prices. Id. M7's allegations are legally and factually insufficient, however, because they lack any explanation of how URS' CLINs are materially unbalanced, or how the government will likely incur higher prices as a result of URS' pricing. Absent any allegation that URS' proposal was materially unbalanced, we find no basis to entertain the protester's complaint that the Air Force's evaluation in this regard was inadequate.

proposal. R3 Gov't Solutions LLC, B-404863.2, Sept. 28, 2012, 2012 CPD ¶ 284 at 5. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 4; Robinson's Lawn Services, Inc., B-299551.5, June 30, 2008, 2009 CPD ¶ 45 at 6.

The crux of M7's argument is that the Air Force did not document any critical analysis of URS' proposed pricing reductions from prior rounds of the competition, and merely accepted at face value the explanations provided by URS. In this regard, M7 contends that the Air Force did not adequately probe the potential risks associated with URS' proposed pricing and corresponding technical approach to determine if URS was likely to perform profitably on the contract. The protester's arguments, however, appear to misconstrue the extent and purpose of a price realism evaluation.

The purpose of a cost realism analysis is to determine whether a vendor's proposed costs are realistic and reasonably represent the most probable cost of performance to the government. Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970 et al., Nov. 25, 2015, 2015 CPD ¶ 373 at 14. In contrast, agencies do not adjust proposed prices during a price realism evaluation, but, rather, use the conclusions from such an analysis for the limited purpose of assessing technical understanding or risk. FAR § 15.404-1(d)(3). In light of the limited purpose of a price realism analysis, there is no requirement that an agency determine whether an offeror's price includes all of its anticipated costs. BillSmart Solutions, LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 8 n.12. Thus, for purposes of a price realism analysis, it is reasonable for an agency to review an offeror's prices and supporting rationale to confirm that the offeror has a realistic approach to performing the contract and justifies any potential price related risks or proposed price reductions. Here, we find that the agency reasonably considered URS' proposed price reductions and determined that they did not evidence either a misunderstanding of the requirements or a material performance risk.

For example, M7 first challenges the agency's alleged failure to critically question URS' proposed staffing reductions for base operations support. The record, however, shows that the evaluators did question the awardee's initial lack of substantiation, and then reasonably reviewed and accepted the awardee's subsequently provided justifications. As part of the corrective action taken in response to URS's initial protest, the Air Force amended the RFP with respect to the descriptions for CLINs X004 and X005. The agency then issued written discussion questions to both URS and M7 asking the offerors to identify whether the changes affected their respective proposals, and, if so, requiring a detailed description of the changes. See, e.g., AR, Tab 21, URS Corrective Action Evaluation Notice, at 1. In response to the Air Force's discussion question, URS confirmed that the changes to CLINs X004 and X005 did not impact its proposal. The awardee, however, proposed a significant price reduction based primarily on reductions to hours to support assigned aircraft under CLIN X001. Id., URS Evaluation Notice Response, at 39-42.

The Air Force determined that URS's proposed price reductions were not adequately supported, and issued URS another round of discussion questions. Id., URS Second Corrective Action Evaluation Notice, 94. In response, URS submitted additional narrative explaining the basis for the proposed price reductions, including the proposed reductions in its staffing to support the Puerto Rico MOB, and in its proposed productive labor hours. URS first explained that it was downwardly adjusting its estimated staffing hours in support of the Puerto Rico MOB based on performance of the identical requirements on the incumbent contract, and the establishment of [DELETED] at the MOB. Id., URS Second Evaluation Notice Response, at 97-99. URS further explained that its staffing approach was informed by its recent successful deployments to the Dominican Republic, Panama, and Peru. Id. at 98-99. With respect to the reduction in proposed productive labor hours, URS explained that it was revising its estimated number of annual productive labor hours for personnel working on the contract based on its actual historical data on the most recent period of performance for the incumbent requirements. Id. at 99-100. URS confirmed that the productive hour revision would not impact the number of full-time equivalents (FTE) at each MOB. Id. at 100.

Based on URS's response, the Air Force determined that the awardee had satisfactorily addressed the proposed reductions. The record reflects the agency found that URS had adequately explained that the reduction in proposed FTEs for support in Puerto Rico was based on URS' experience during recent deployments on the incumbent work and the establishment of [DELETED], and that the proposed reduction in total productive hours was supported by URS's recent analysis of historical data. Id., Evaluation of URS' Second Evaluation Notice Response, at 101. Contrary to M7's suggestions, we do not find that the agency was required to extensively document its rationale for accepting the proposed reductions. Rather, the record demonstrates that the Air Force critically reviewed URS' initial, unsupported reductions, sought clarifying information, and reviewed the incumbent's detailed responses setting forth the bases for its proposed pricing modifications. In this regard, the Air Force does not appear to have relied on unsubstantiated promises of URS, but, rather, relied on URS' actual historical data obtained through performance of the identical requirements on the incumbent contract. On this record, and in the absence of any specific allegations from M7 explaining why the proposed staffing reductions were unrealistic, we find no basis to sustain the protest.

As another example, M7 alleges that the Air Force failed to reasonably assess URS' proposed changes to calculating and charging its [DELETED] costs, with the net result being a significant reduction in URS' [DELETED] rate. In its final proposal revision, the awardee proposed three discrete changes to its [DELETED] structure. First, URS proposed to reduce the anticipated [DELETED] for its [DELETED], as well as to reduce the number of [DELETED] based on its historical performance data on the incumbent requirements. AR, Tab 23, URS Final Price Proposal, at 154-55. Neither of these changes appears to be challenged by M7. The third proposed change, which M7 does challenge, relates to URS' change to how it proposes to allocate its [DELETED] rate.

Specifically, URS, based on historic performance trends, anticipated that the Air Force will order deployments under CLIN X009 or issue other contract modifications averaging approximately [DELETED] annually. URS explained that its [DELETED] calculation was based on data from 2017, when the Air Force ordered approximately \$8.5 million in deployments and other contract modifications. The awardee proposed to apply its [DELETED] rate to this future anticipated labor. Id. at 154.

M7 argues that the Air Force failed to reasonably consider the potential risks with this approach. Specifically, the protester contends that URS unreasonably speculates that the agency will issue modifications under the contract, and that URS will experience significant financial losses in excess of [DELETED] if the additional anticipated work is not ordered. M7 argues that by shifting [DELETED] costs to the unpriced deployments CLIN or to other labor-based CLINs in excess of the RFP's EQT estimates, URS artificially reduced its TEP by moving [DELETED] related costs to yet-to-be ordered labor.

In addition to disputing the protester's calculation of the purported loss and several of the underlying assumptions in the protester's arguments, the agency and intervenor argue that the agency reasonably considered URS' proposed approach as realistic and without any material performance risk. In this regard, they argue that the structure of this indefinite-delivery, indefinite-quantity contract includes significant labor costs outside of the base labor CLIN (X001) or the estimated quantities set forth in CLINs X007, Over and Above, and X010, T&E Services. They argue that merely because some of the anticipated labor costs, such as potential deployments under CLIN X009, were excluded from the TEP does not mean that labor costs are not reasonably anticipated to be incurred under those CLINs. The agency and intervenor point to URS' reliance on historical data as demonstrating that such additional costs are likely to be incurred under the contract, and argue that there is nothing unreasonable or inherently risky in URS' proposed approach to allocate its [DELETED] costs to all labor anticipated under the contract, regardless of the CLIN it was incurred under or whether the associated direct labor was included in the TEP.

On this record, we find no basis to conclude that the Air Force's acceptance of URS' proposed restructuring of its method for allocating [DELETED] costs as realistic was unreasonable. As explained above, the contract will include a number of CLINs providing the agency with the ability to order additional work, including labor costs, namely under CLINs X007, Over and Above, X009, Deployments/TDY, and X010, T&E Services. Indeed, in light of the significant difference between the offerors' TEPs and the contract's maximum ceiling value, and based on URS' experience as the incumbent, we find no basis to conclude that the Air Force unreasonably accepted the awardee's assumption that some additional optional labor would be ordered under the contract. Accepting that this was a reasonable assumption, we further do not find objectionable the agency's conclusion that URS' proposed allocation of [DELETED]-related costs across all labor benefitting from [DELETED], as opposed to limiting such [DELETED] costs only to labor included in the base support CLIN (X001) or the estimated labor included in the TEP for CLINs X007 and X010, did not reflect a material

misunderstanding of the RFP's requirements or present material performance risk. Additionally, even assuming for the sake of argument that M7 is correct that there is a more than insignificant chance that the agency will not order any deployments or additional modifications under the contract, nothing about an obligation to review prices for realism bars an offeror from proposing--and an agency from reasonably deciding to accept--a below cost offer. Optex Sys., Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6. On this record, we find no basis on which to sustain the protest.

Unequal Access to Information

M7 also alleges that URS must have had unequal access to non-public information obtained through its incumbent performance or otherwise that allowed the awardee to significantly reduce its price. Specifically, the protester alleges that the awardee must have unfairly obtained access to information that allowed it to substantially reduce its final proposed staffing for the Puerto Rico MOB, and its staffing for aircraft maintenance under the Flying Hours CLIN. For the reasons that follow, we have no basis to conclude that URS had access to, or otherwise relied on, non-public source selection or other sensitive information that was improperly obtained.

M7 first alleges that URS gained unequal access to information based on its ongoing incumbent performance that allowed it to substantially reduce its proposed staffing to support the services at the Puerto Rico MOB. In essence, M7 alleges that URS has an unmitigated unequal access to information organizational conflict of interest (OCI). An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR § 9.505(b); Signature Performance, Inc., B-411762, Oct. 19, 2015, 2015 CPD ¶ 321 at 5. It is well settled, however, that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract--either as an incumbent contractor or otherwise--and the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); Lovelace Sci. & Tech. Servs., B-412345, Jan. 19, 2016, 2016 CPD ¶ 23 at 12; Signature Performance, Inc., supra. The existence of an incumbent advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Superlative Techs., Inc.; Atlantic Sys. Grp., Inc., B-415405 et al., Jan. 5, 2018, 2018 CPD ¶ 19 at 7.

The Air Force maintains that URS' proposal revisions regarding the support services at the Puerto Rico MOB demonstrate that they were based on the experience URS gained in performing the incumbent requirements, rather than any non-public source selection or other sensitive information that was improperly obtained. Supp. Contracting Officer's Statement of Fact and Legal Memo. at 11. In this regard, the record reflects that in its discussion responses and final proposal revision, URS explained that during the last quarter of 2017 and first quarter of 2018 it has sustained rotational aircraft in Puerto Rico. Based on that specific experience performing the incumbent requirements, the

awardee determined that it was able to perform more efficiently than the initial assessments that formed the basis of its initial proposal. AR, Tab 23, URS Final Price Proposal, at 156. URS further explained that its staffing approach utilized in Puerto Rico was consistent with its successful staffing on recent deployments to the Dominican Republic, Peru, and Panama. Id. at 160-61. Additionally, URS explained that its experience in Puerto Rico will provide URS the opportunity to gain efficiencies with people, supply and distributions assets, and [DELETED], including the establishment of [DELETED]. Id. at 161.

We agree with the Air Force. Nothing in URS' contemporaneous explanation for its changed staffing approach indicates that URS relied on unfair access to non-public information. Rather, the information supplied by URS in support of its change reflects the type of experience-based information that allowed it as the incumbent to more accurately forecast its performance of similar requirements, which is a typical, inherent incumbent advantage. Absent any contrary evidence by the protester, we have no basis to conclude that URS maintained an unfair competitive advantage regarding the support services requirements at the Puerto Rico MOB.

M7 also alleges that URS must have relied on non-public information to reduce its proposed price for CLIN X002, Flying Hours. Specifically, M7 challenges URS' proposed reduction in price based on the anticipated implementation of new FAA rules requiring new equipment and performance standards for avionics for all aircraft.⁵ URS explained it anticipated that the new avionics modifications would be completed by the end of the second option year in 2020, and that the new equipment, which would replace aging equipment on the aircraft, will likely result in less required maintenance. AR, Tab 23, URS Final Price Proposal, at 157.

Although the date for completion of the modifications used by URS is consistent with the compliance date established by the FAA, see AR, Tab 54, Automatic Dependent Surveillance-Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC) Service, 75 Fed. Reg. 30159 (May 28, 2010), at 2 (establishing a January 1, 2020 compliance date for all aircraft), M7 argues, relying on news articles and a GAO audit report, it is unlikely that the Department of Defense (DOD) will be able

⁵ As part of its development of the Next Generation Air Transportation System, the FAA explains that it has determined that it is essential to move from ground-based surveillance and navigation to more dynamic and accurate airborne-based systems and procedures in order to enhance capacity, reduce delay, and improve environmental performance. AR, Tab 54, Automatic Dependent Surveillance-Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC) Service, 75 Fed. Reg. 30159 (May 28, 2010), at 3. The FAA's new rules will require the use of Automatic Dependent Surveillance-Broadcast equipment, which is an advanced surveillance technology that combines an aircraft's positioning source, aircraft avionics, and a ground infrastructure to create an accurate surveillance interface between aircraft and air traffic control. Id.

to successfully implement and comply with the new regulatory requirements by 2020. Based on this information, the protester speculates that URS must have obtained some non-public information indicating that DOD will in fact be able to comply with the requirements by 2020. See M7's First Supp. Comments at 7. M7's unsupported argument is without merit.

It is reasonably apparent--and M7 does not credibly allege otherwise--that URS' assumption is based on the FAA's public notice of rulemaking that requires all aircraft, including military aircraft, to be compliant by 2020. While other sources call into doubt DOD's ability to successfully comply with the requirements by the required date, none of these sources are definitive, such as a waiver or exemption granted by the FAA or an official pronouncement from the Air Force or DOD. On this record, we find no credible basis to conclude that URS relied on any improperly obtained non-public information. In addition, we have no basis to question the agency's acceptance of the awardee's reasonable assumption that the Air Force will comply with a mandatory legal requirement. Therefore, we find no basis to sustain the protest.

Discussions

M7 also alleges that the Air Force misled the protester to raise its prices during discussions. The protester argues that the agency "strongly encouraged" M7 to revise its price proposal, and, in light of the agency's corrective action taken in response to URS' prior protests, which alleged that M7's lower proposed price was unrealistic, the protester reasonably understood the discussion questions to be seeking an upward adjustment. See, e.g., Protest at 25. The record, however, demonstrates that M7 ultimately increased its price based on the firm's own business judgments, and not as the result of misleading discussions. Therefore, we find no basis on which to sustain the protest.

In negotiated procurements, whenever discussions are conducted by an agency, they are required to be meaningful, equitable, and not misleading. TransAtlantic Lines, LLC, B-411242, B-411242.2, June 23, 2015, 2015 CPD ¶ 204 at 14. In conducting discussions with offerors, an agency may not consciously mislead or coerce an offeror into raising its price. Serco Inc., B-407797.3, B-407797.4, Nov. 8, 2013, 2013 CPD ¶ 264 at 5. However, we will not find discussions to be improper where the agency in good faith provides accurate information to an offeror, even where the offeror uses that information to its ultimate competitive detriment. Id. Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9.

Following the corrective action taken in response to URS Federal Services, Inc., B-415252.2, B-415252.3, the Air Force amended the RFP to clarify the scope of the contractor's obligations under CLINs X004, Engine CZIs, and X005, Engine HSIs. The agency then issued nearly identical evaluation notices to M7 and URS. In relevant part, the notices provided that "[a]s a result of clarifying the CLIN and PWS language in RFP

amendment 0005, the Government wants to confirm the proposed unit prices include all the necessary labor, parts and supplies, test cell costs, and shipping and packaging costs.” AR, Tab 20, M7 Evaluation Notice, at 1; Tab 21, URS Evaluation Notice, at 1.

The Air Force’s initial evaluation notices to M7 and URS provided the same four discussion questions. Relevant here, the agency asked both offerors to specifically review their proposed prices for CLINs X004 and X005, as well as generally for all other CLINs. Specifically, the notices included the following identical instructions:

1. Review the proposed pricing for the listed CLINs to ensure all necessary requirements from the PWS are included in the proposed pricing. If the proposed unit prices are incorrect, provide the corrected prices with a basis of estimate or explanation of the revised proposed unit prices. If the proposed unit prices are correct, verify the prices as correct and provide a complete explanation to justify the proposed unit prices.

Provide the basis of estimate for each type of inspection. For example at the prime and subcontractor level provide the basis of estimate/rationale for labor for inspection, repair, or replacement of components. Also, provide the method used to determine what parts were included in the estimated material costs to ensure that all completed engines will perform until the next scheduled inspection.

* * * * *

4. If the offeror revises any other CLIN pricing, provide an updated pricing matrix and an updated price model to include the basis of estimate or rationale for the change. Ensure sufficient detail is provided to support the revised price.

AR, Tab 20, M7 Evaluation Notice, at 16; Tab 21, URS Evaluation Notice, at 17.

The only difference in the evaluation notices is that the Air Force expressly identified concern with the lack of detail substantiating M7’s proposed prices for CLINs X004 and X005. Specifically, the Air Force noted that M7’s prior price model for the two CLINs “include[d] limited explanation as to what [] is included in the unit price development.” AR, Tab 20, M7 Evaluation Notice, at 15. The agency notified M7 that it was “strongly encouraged to provide a basis of estimate for HSI and CZI of engines more thorough than a simple verification/confirmation that the proposed prices include all needed costs to meet requirements.” Id. at 16. Thus, contrary to M7’s argument, the Air Force did not “strongly encourage” M7 to reduce its price. Indeed, nowhere does the evaluation notice indicate any concern with the realism of M7’s proposed prices. Rather, it is apparent that the Air Force strongly encouraged M7 to substantiate its proposed price.

M7 responded to the evaluation notice’s four discussion questions. Relevant here, M7 responded to question one by indicating that its previously proposed prices for CLINs

X004 and X005 did “not reflect the Amendment 0005 changes,” and that the changes required upward adjustments. AR, Tab 20, M7 Evaluation Notice Response, at 17. Additionally, the protester represented that it was obtaining new subcontractor and engine depot vendor quotes. Id. M7 advised that the CLINs would be revised in its final proposal revision “based upon this cost and risk review.” Id. With respect to question four, M7 represented that it intended to revise multiple additional CLINs beyond CLINs X004 and X005. Id. In this regard, M7 stated that “[o]ther CLINs will also be adjusted based upon updated quotes requested but not yet received, risk reduction strategies, and revisions to reflect the revised technical proposal submitted with these [evaluation notice] responses.” Id. The protester again represented that the changes would be included in its final revised pricing matrix and price model included in its final proposal revision. Id. M7’s response clearly indicated that it was evaluating potential price changes based on its review of the requirements and risks, and changes in its technical approach, as opposed to any perceived direction from the agency.

The Air Force issued a second evaluation notice to M7 based on its initial responses to questions one and four. The agency noted that M7 indicated its intent to revise its proposed prices, and that any such changes would be presented in its final proposal revision. The Air Force reiterated the RFP’s and evaluation notice’s requirements that any changes be fully supported and justified, and again invited the protester to submit substantiation during discussions so that the Air Force could reasonably evaluate M7’s proposed prices. Specifically, the agency, in reissuing questions one and four to M7, explained that:

Offeror is strongly encouraged to provide revised unit prices for CLINs affected in a revised Price Matrix and revised Price Model during discussions. It is in the Offeror’s best interest to provide this data for Government review while discussions are still possible. This review allows for additional questions which may arise during discussions. The offeror is cautioned that without the revised information, the Government cannot determine whether the revised unit prices are complete, reasonable, realistic, and balanced. Introducing revised unit prices for the first time in the offeror’s Final Proposal Revision (FPR) introduces risk that the offeror’s proposal may be unawardable, as the Government is not required to reopen discussions if it determines the revised unit prices are not supported and justified.

AR, Tab 20, M7 Second Evaluation Notice, at 19.

Here again, far from identifying any concerns with the realism of M7’s proposed prices, the Air Force was conveying the need for the protester to substantiate its prices. Indeed, the agency was specifically responding to the protester’s stated intent to amend its proposed prices when it “strongly encouraged” M7 to substantiate those yet to be disclosed price changes.

In response to the second evaluation notice, M7 proposed changes to ten CLINs resulting in a net increase of more than \$20 million in its total proposed price.⁶ The protester explained that the pricing changes were the result of M7's review to ensure: (1) all necessary requirements from the PWS were included in the proposed pricing; (2) model calculations were correct; (3) assumptions for bases of estimates were correct; (4) compliance with the Service Contract Act was met; (5) latest supplier quotes were utilized; and (6) most recent company direct and indirect provisional rates were used. AR, Tab 20, M7 Second Evaluation Notice Response, at 21. Here again, M7's response clearly indicated that it was proposing price changes based on its review of the requirements and risks, and changes in its technical approach, as opposed to any perceived direction from the agency.

The record shows that the Air Force consistently requested that M7 substantiate its proposed prices, but never raised any specific concern--let alone encouraged or directed M7 to address--any perceived realism concerns with M7's proposed prices. Further, the impetus for the protester's pricing changes appears to have been the result of its internal analysis of the requirements, associated risks, and changes in its subcontractor, vendor, and material costs. In contrast, in response to a nearly identical evaluation notice, URS proposed significant price reductions. Then, when the Air Force questioned URS on the basis for the reductions, unlike M7, which made the decision to increase its price, URS provided further justifications for the reductions that were subsequently accepted by the evaluators. On this record, we find that M7's decision to raise its price constituted an exercise of independent business judgment, which does not establish that the Air Force conducted misleading discussions. DRS Network & Imaging Sys., LLC, B-413409, B-413409.2, Oct. 25, 2016, 2016 CPD ¶ 315 at 8 n.6; CSC Gov. Solutions LLC, B-413064, B-413064.2, Aug. 10, 2016, 2016 CPD ¶ 347 at 10. Therefore, we find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁶ There was a disparity in the figures presented in M7's revised pricing matrix and pricing model, and the accompanying narrative for the changes. The agency and protester engaged in further communications to clarify the total impact. AR, Tab 20, Evaluation of M7's Second Evaluation Notice Response, at 27, 61.