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Decision

Matter of: Phoenix Management, Inc.

File: B-418724

Date: August 14, 2020

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Christopher M. Judge, Esq., and Colonel Patricia S. Wiegman-Lenz, Department of the Air Force, for the agency.
Kasia Dourney, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly evaluated awardee's proposal as technically acceptable is denied where the record shows the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging an agency's evaluation of the offerors' price proposals, and alleging that it was based on an incorrect independent government estimate (IGE), is denied where the IGE was not the sole basis for the agency's evaluation of price, and the agency reasonably concluded that both offerors' prices were reasonable and realistic.
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DECISION

Phoenix Management, Inc., of Austin, Texas, protests the award of a contract to Data Monitor Systems, Inc. (DMS), of Midwest City, Oklahoma, under request for proposals (RFP) No. FA8101-19-R-A022, issued by the Department of the Air Force for base supply and munitions services at Tinker Air Force Base (AFB) in Oklahoma. The protester asserts the agency unreasonably concluded that DMS's proposal was technically acceptable, and improperly evaluated price proposals, relying on an incorrect independent government estimate (IGE).

We deny the protest.

BACKGROUND

The RFP, issued on July 9, 2019, for “all personnel, equipment, tools, vehicles, materials, supervision, and other items and services necessary to perform the supply function” at Tinker AFB, contemplated the award of a fixed-price contract for a base period of 11 months with four 1-year options. Agency Report (AR), Tab 5a, RFP at 3-8, 109, 256.

The solicitation stated that award would be made on a best-value tradeoff basis to the offeror whose proposal would be most advantageous to the government, considering technical/management acceptability; past performance; and cost/price. *Id.* at 247.

The solicitation provided that proposals were to be first evaluated for technical acceptability, and assigned ratings of acceptable or unacceptable. RFP at 249. The technical/management acceptability factor included three subfactors: program management and orientation plan; manpower and organization chart; and execution plans. RFP at 248-49. Technically acceptable proposals were then to be further evaluated under the past performance and price factors, which were of approximately equal importance, followed by a source selection in which the agency could make a tradeoff between past performance and price. *Id.* at 249.

The RFP advised that price proposals would be evaluated for reasonableness, balance, realism, and the total evaluated price (TEP). RFP at 254. The agency established an IGE of \$[DELETED], “based upon the historical prices for the requirement, adjusted to reflect a 1.5% rate of inflation per annum.” Contracting Officer’s Statement (COS) at 2. The IGE that the agency used to evaluate proposals also included a new contract line item number (CLIN), weapons vault, which was not a part of the prior requirements.¹ *Id.*

To aid offerors in preparing their proposals, the solicitation included certain level-of-effort information, reflecting the average workload experienced within the last two years at Tinker AFB for 119 items encompassed by the Performance Work Statement (PWS), but did not require offerors to propose any particular level of manhours or FTE (full-time equivalent) personnel. See RFP, Appendix 1, Workload Estimates.

¹ The Air Force explains that the initial IGE, developed on June 5, 2018, was subsequently updated multiple times. COS at 2; see AR, Tab 4a, June 6, 2018 IGE (Without CLIN 14); Tab 4b, May 19, 2019 IGE (With CLIN 14, No Option Breakout); Tab 4c, October 16, 2019 IGE (With CLIN 14 and Option Breakout). The IGE of \$[DELETED], used to evaluate proposals, did not reflect an adjustment and subsequent modification of the incumbent contract’s price. The incumbent contract’s price was adjusted in response to a wage determination (WD) issued on November 20, 2018. COS at 2 n.1. After Phoenix filed its protest, the Air Force reviewed the procurement record and upwardly adjusted the IGE to reflect that WD price adjustment. AR, Tab 33, June 4, 2020 IGE (With WD Adjustment). As a result, the IGE’s TEP increased by 6.1 percent, to \$[DELETED]. COS at 14.

As relevant to this protest, the RFP included a Collective Bargaining Agreement (CBA) with the incumbent contractor, Phoenix, indicating that current employees were covered by the CBA. RFP at 180.

The agency received three proposals in response to the solicitation, including ones from Phoenix and DMS, by the closing date of August 19, 2019.² After an initial evaluation, the Air Force excluded one proposal as technically unacceptable, established a competitive range, and entered into discussions with Phoenix and DMS. AR, Tab 11a, Competitive Range Decision Document at 1.

The Air Force's discussions with DMS concerned its technical proposal, which was initially assessed one deficiency, under the manpower and organization chart subfactor, and was evaluated as technically unacceptable. *Id.* at 2-3; AR, Tabs 12, 14, DMS Exchange Notices (EN). Specifically, DMS proposed only [DELETED] FTEs for the requirement, which the agency found insufficient, especially in light of the proposal's lack of any "supporting rationale describing how the proposed number of personnel can successfully accomplish all PWS requirements." AR, Tab 9a, DMS Initial Evaluation Worksheet at 3.

The agency sent three technical exchange notices to DMS, asking it to review the proposed organizational chart and manpower approach, and to include "a sufficient number of personnel for all requirements." AR, Tabs 12, 14, DMS Exchange Notices. DMS responded by increasing the number of total proposed FTEs by 10 percent, from [DELETED] to [DELETED] FTEs. COS at 9; AR, Tab 13a, DMS EN Responses, Round 1 at 1, 4. DMS also revised its staffing chart and explained its intent to [DELETED], allowing for more efficient use of resources. AR, Tab 15a, DMS EN Responses, Round 2 at 6. Finally, DMS confirmed that it had reviewed its staffing under comparable requirements at [DELETED] AFB, and [DELETED] AFB, and was confident that its proposal would be sufficient to meet the instant requirement. *Id.* at 2, 6.

Upon review of DMS's responses, the Air Force concluded that DMS sufficiently addressed the agency's concerns and revised DMS's rating under the manpower and organization chart subfactor from unacceptable to acceptable. AR, Tab 22a, Pre-Final Proposal Revisions (FPR) Source Selection Evaluation Board (SSEB) Report at 27.

The agency also conducted several rounds of discussions with DMS regarding its price proposal. Specifically, the Air Force sent 10 price exchange notices to DMS, including

² Both the protester and the awardee have performed this requirement, either currently or at some point in the past: Phoenix is currently performing contract FA8101-15-C-0002, which was awarded in February 2015, while DMS was the incumbent under contract FA8101-06-C-0010, which was awarded in June 2006. Memorandum of Law (MOL) at 2.

questions about the price realism of 9 (out of 15) CLINs for which prices were 25 percent or lower than the IGE.³ COS at 8; AR, Tabs 12, 14, DMS Exchange Notices.

In response, DMS increased its prices for the CLINs for which it had increased staffing. AR, Tab 20b, DMS Pre-FPR Price Worksheet at 3. DMS also explained its prices for the CLINs for which its proposed staffing was lower than on the incumbent contract, indicating that it would [DELETED], which the technical evaluation team found to be technically acceptable. *Id.*; COS at 10. As a result, DMS's TEP increased to \$[DELETED], which was 8.1 percent below the IGE of \$[DELETED]. Nevertheless, the agency found that DMS had an adequate "understanding of the requirements," and determined its proposed price realistic. COS at 10; AR, Tab 20b, DMS Pre-FPR Price Worksheet at 3.

The agency sent no technical exchange notices to Phoenix, whose technical proposal was based on providing [DELETED] FTEs for the requirement, and was evaluated as acceptable under all three technical subfactors. However, the agency engaged in several rounds of discussions regarding Phoenix's price proposal. AR, Tabs 16, 18, Phoenix Exchange Notices.

Specifically, the agency advised Phoenix that its price for CLIN 005, Individual Equipment, "appear[ed] significantly high compared to the [g]overnment estimate." AR, Tab 16, Phoenix Exchange Notice at 1. The Air Force asked Phoenix to "[r]eview proposed pricing," and either provide a confirmation of the price, along with the "basis of estimate or rationale," or revise the price for this CLIN. *Id.*

In response, Phoenix chose not to revise its price, but instead, explained that it utilized the same staffing--[DELETED] stock clerks--as it currently had in place on the incumbent contract. AR, Tab 17a, Phoenix EN Response at 2. Phoenix also stated that "[a]s the incumbent contractor for this effort, we are intimately familiar with the workload and labor requirements," indicating that it "has been operating this contract since 2001," both as a prime contractor and a subcontractor. *Id.* The agency found the response sufficient to conclude that Phoenix's price proposal, including the CLIN 005 price, was reasonable. COS at 11.

After concluding discussions, the agency notified both offerors that it accepted their respective responses to the exchange notices as formal proposal revisions, and informed them of the results of its most recent evaluations. The Air Force also provided Phoenix and DMS another opportunity to submit FPRs, which both offerors declined to do. *Id.*

Both offerors' past performance proposals received satisfactory confidence ratings. *Id.* With respect to price, Phoenix's revised TEP was \$[DELETED], *i.e.*, 4.9 percent higher

³ The Agency conducted discussions on all line items which exceeded or fell below the IGE by 25 percent or more. MOL at 9.

than the IGE of \$[DELETED], while DMS's revised TEP was \$[DELETED], *i.e.*, 8.1 percent below the IGE. COS at 10-11.

The SSEB noted that the technical proposals of both Phoenix and DMS were rated acceptable, and that both offerors received the same satisfactory confidence ratings for their past performance proposals. AR, Tab 29b, SSEB Final Presentation at 83. Since DMS offered the lower price, \$[DELETED], which was "determined [to be] reasonable, balanced, and realistic," the SSEB concluded that DMS's proposal represented the best value to the government. *Id.* The Source Selection Authority adopted the SSEB's recommendation, and awarded the contract to DMS. AR, Tab 30, Source Selection Decision at 10.

After a debriefing, provided to Phoenix on May 5, this protest followed.

DISCUSSION

Phoenix asserts that the agency "arbitrarily" found DMS's proposal technically acceptable, despite DMS proposing a level of supervision that was lower than was required; improperly proposing a CBA member as an alternate on-site manager; and offering insufficient staffing for the requirement. Protest at 11-18; Protester's Comments at 2-11. The protester also argues that the agency's evaluation of the price proposals was unreasonable because it was based on an incorrect IGE.⁴ We have considered all of Phoenix's various allegations and find no basis to sustain its protest. Below we discuss Phoenix's principal contentions.

Evaluation of DMS's Technical Proposal

Phoenix contends that the Air Force unreasonably evaluated DMS's proposal as technically acceptable. First, Phoenix asserts that DMS failed to propose an adequate level of supervision. Specifically, Phoenix argues that DMS did not propose a supervisor for a building located 0.3 miles away from the main administration building, where approximately 40-50 percent of the overall requirement would be performed. Protest at 11-12. Alternatively, Phoenix speculates that DMS is planning to use a CBA-

⁴ In its protest, Phoenix also maintains that it "became aware that the [a]gency is planning" to make a cardinal change to the awarded contract, only days after the award. Protest at 17-18. On May 15, 2020, the agency requested dismissal of this protest ground as premature, explaining that it has not made the alleged modification. Agency's Req. for Partial Dismissal at 4. On May 22, our Office indicated its intention to grant the agency's request for dismissal of this protest ground. Bare speculation about possible future contract modifications will be dismissed by our Office as premature. *See, e.g., ITT Elec. Sys., Radar Sys.-Gilfillan*, B-299150 *et al.*, Feb. 2, 2007, 2007 CPD ¶ 19 at 3. Accordingly, this protest ground is dismissed.

covered employee to perform management functions in that building in violation of the CBA.⁵ *Id.*

The agency responds that the solicitation did not require offerors to propose a supervisor to be present at that particular building. COS at 15. Instead, the Air Force points out that the RFP includes a general requirement that offerors provide “all . . . supervision . . . necessary to perform the [s]upply function,” RFP at 109, but does not specify which buildings are required to have a full-time on-site supervisor, and does not require that each building have one. *Id.* The contracting officer explains that DMS’s offer of an “[o]n-site [m]anager [who] has complete authority for managing all work functions and directing and supervising on-site contractor personnel in fulfilling contract requirements,” that is “not assigned to any particular building,” provided an acceptable approach for supervision of the work required under the RFP. COS at 15. We agree.

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor will we substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.*

Here, the record reveals that the agency properly considered the level of supervision and quality control proposed by DMS. As discussed above, after engaging in extensive technical discussions with DMS, the Air Force concluded that DMS’s “proposed manning approach is sufficient, and does ensure all Base Supply and Munitions functional requirements can be successfully accomplished.” COS at 16; AR, Tab 27a, DMS Final Technical Evaluation Worksheet at 9. We find no basis to question the reasonableness of the agency’s determination in this regard.

⁵ The CBA, incorporated in the solicitation, included the following provision:

2.4. SUPERVISORS: Supervisors and management personnel will be able to assist employees in trouble-shooting technical advice, and training.

2.4.1. When an emergency situation warrants or when a shift is crippled by employee absenteeism, a supervisor or manager can fill a position until sufficient employees can be called in from off work and arrive at the job prepared to perform the work involved.

2.4.2. With the exceptions stated herein, *supervisors will not perform bargaining unit work.*

RFP at 185 (emphasis added).

To the extent Phoenix alleges that DMS's proposed staffing approach violates the CBA, this allegation is speculative, and Phoenix seems to concede in its comments on the agency report that the supervisor proposed by DMS was not covered by the CBA. Specifically, Phoenix acknowledges that the DMS supervisor was an "exempt" employee--*i.e.*, not a member of a bargaining unit--and was allowed to perform management functions. Protester's Comments at 10. Moreover, potential violations of CBAs, and the general responsibility for enforcement of labor requirements, are vested in the Department of Labor, and are not for resolution by our Office. See 4 C.F.R. § 21.5(a); *Triad Logistics Servs. Corp.*, B-407842.2, Apr. 22, 2013, 2013 CPD ¶ 106 at 5 n.8. Hence, we have no jurisdiction to consider this issue.⁶

Further, Phoenix contends that the awardee proposed insufficient staffing for the requirement. Protest at 15-16. The protester asserts that, based on its incumbent knowledge, DMS proposed an insufficient number of FTEs for staffing, and contends that this shortfall demonstrates an inadequate understanding of the requirements. *Id.*

A disagreement with the agency's judgment, without more, does not provide a basis for our Office to conclude that the evaluation was unreasonable. *Mil-Mar Century Corp.*, B-407644, B-407644.2 *et al.*, Jan. 17, 2013, 2013 CPD ¶ 39 at 6. As discussed above, DMS initially proposed a total of [DELETED] FTEs for the requirement, and, after discussions with the agency, increased this number by 10 percent, to [DELETED] FTEs. COS at 9; AR, Tab 13a, DMS EN Responses, Round 1 at 1, 4. The awardee also revised its staffing chart, intending to [DELETED], and reviewed its staffing under comparable requirements at [DELETED] AFB and [DELETED] AFB, ensuring it could meet the current requirement. AR, Tab 15a, DMS EN Responses, Round 2 at 6. Ultimately, the agency concluded that DMS provided a convincing rationale for how it would successfully perform the requirement with [DELETED] FTEs. We find no basis to disturb the agency's conclusion in this regard.

Evaluation of Offerors' Price Proposals and Allegations of an Incorrect IGE

Phoenix also challenges the agency's evaluation of the price proposals, stating that the Air Force's determination that the prices were reasonable and realistic was based on an incorrect IGE. Protest at 10-11; Protester's Comments at 15.

First, Phoenix complains that the agency improperly "insisted" that its "proposed FTE was too high" for one of its proposed CLINs. Protest at 9. Phoenix asserts that the agency's determination in this regard is based on an incorrect IGE, and the flawed method used by the Air Force in calculating the IGE. *Id.* at 10-11; Protester's Comments at 12-13. Specifically, Phoenix alleges that the agency's reliance on "historical prices paid," adjusted to reflect "an arbitrary 1.5% inflation rate," improperly

⁶ For the same reason, we will not consider Phoenix's other CBA-related allegation, *i.e.*, that DMS improperly proposed a bargaining-unit covered employee as an alternate on-site manager in violation of the CBA. Protest at 12-13.

disregards “the historical workload” for the requirement, reflected in the RFP’s appendix 1. *Id.* Second, Phoenix asserts that DMS’s proposed price was so low that the awardee could not have been found to have a reasonable understanding of the RFP’s requirements. Protest at 16.

The agency responds that the IGE is a reasonable reflection of the agency’s requirement, and that the protester has provided no reason to conclude otherwise. MOL at 9-10. The agency acknowledges that the IGE inadvertently did not reflect a wage determination price adjustment that was made to the incumbent contract, and that the IGE was later revised--after proposals were evaluated and after Phoenix filed its protest--to include that amount, upwardly adjusting the TEP by 6.1 percent, to \$[DELETED]. *Id.* at 17 n.7; AR, Tab 33, June 4, 2020 IGE (With WD Adjustment). The Air Force argues that whether the IGE was revised or not, the exchange notices issued to Phoenix and DMS regarding price reasonableness and realism would not have changed; for example, after revision, Phoenix’s proposed price for CLIN 005 still exceeded the IGE “by 25 percent or more,” which was the threshold for necessitating discussions. MOL at 10-11; AR, Tab 33, June 4, 2020 IGE (With WD Adjustment).

Our Office will review challenges to government estimates for reasonableness. See *Division Laundry and Cleaners, Inc.*, B-311242, May 19, 2008, 2008 CPD ¶ 97 at 3; *OMNI Gov’t Servs., LP, B-297240.2 et al.*, Mar. 22, 2006, 2006 CPD ¶ 56 at 3. A protester’s disagreement with an agency’s basis for developing an estimate, without more, provides no basis to sustain a protest. See *Quantech Servs., Inc.*, B-408227.8, B-408227.9, Dec. 2, 2015, 2015 CPD ¶ 380 at 8.

Here, while Phoenix challenges the accuracy of the agency’s IGE, it does not provide any basis on which we could conclude that the alleged inaccuracy affected the evaluation of Phoenix’s price or otherwise prejudiced Phoenix’s competitive position. We reach this conclusion because after the agency raised its concerns about Phoenix’s prices in discussions, and Phoenix--without changing its prices--explained its approach, the Air Force concluded that the protester’s price was reasonable. MOL at 9. The final evaluation record does not indicate that the Air Force found Phoenix’s proposed price for CLIN 005 to be “too high,” as the protester argues, but instead, states that this issue was successfully resolved during discussions. AR, Tab 29b, SSEB Final Presentation at 78.

With regard to the agency’s evaluation of DMS’s price, Phoenix argues that the allegedly too-low IGE enabled the agency to find DMS’s low price realistic. Phoenix also contends that the agency only evaluated DMS’s price in comparison to the original IGE, as 8 percent below the IGE, while in fact, as it became apparent after the IGE revision, it was 15 percent below the IGE. Protester’s Comments at 15. We find that this assertion, too, fails to provide a basis upon which to sustain the protest.

As noted above, the agency conducted extensive price discussions with the awardee, prompted by 10 price exchange notices sent to DMS. COS at 8; AR, Tabs 12, 14, DMS Exchange Notices. During discussions, DMS explained its unique staffing approach,

which consisted of [DELETED], and revised its staffing chart, increasing the number of FTEs from [DELETED] to [DELETED]. MOL at 16. DMS also reviewed its staffing under comparable requirements at [DELETED] AFB and [DELETED] AFB, ensuring that the proposed [DELETED] FTEs would be able to successfully perform the current requirement. *Id.*

Only after receiving those additional assurances during discussions, did the agency find DMS technically acceptable, and its proposed price realistic. MOL at 16; AR, Tab 29b, SSEB Final Presentation at 56. As the agency correctly points out, “price realism evaluations ‘must consider the unique technical approaches proposed by each offeror.’” MOL at 17 (citing *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 7). Here, we find no basis to disturb the agency’s conclusion that DMS adequately understood the requirement, and will be able to perform the contract with [DELETED] FTEs, at a price below the Air Force’s estimate.

In addition, the record shows that the agency did not rely exclusively on the IGE. Instead, the agency used multiple methods to assess whether proposed prices were reasonable and realistic, including a comparison of the proposed prices and analysis of other data. See Federal Acquisition Regulation (FAR) 15.404-1(b)(2)(i), (vii); AR, Tab 28b, Phoenix Final Price Evaluation Worksheet at 1 (“analysis of the data provided by [Phoenix] as part of their Volume III Price Proposal,” pursuant to FAR 15.404-1(b)(2)(vii)); see also, e.g., *Oasis Sys., LLC*, B-407273.54 *et al.*, June 19, 2014, 2014 CPD ¶ 199 at 14; *AMTIS-Advantage, LLC*, B-411623, B-411623.2, Sept. 16, 2015, 2015 CPD ¶ 360 at 11 (flawed IGE creates no competitive prejudice where agency also used other price analysis techniques to determine price reasonableness). Accordingly, we see no basis to object to the agency’s determination in this regard.

The protest is denied.

Thomas H. Armstrong
General Counsel