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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Manthos Engineering, LLC

File: B-401751

Date: October 16, 2009

Terry E. Thomason, Esq., Corianne W. Lau, Esq., and Jessica Y. K. Wong, Esq., Alston Hunt Floyd & Ing, for the protester.

Janis P. Rodriguez, Esq., and Ryan M. Kabacinski, Esq., U.S. Department of Transportation, Maritime Administration, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's rejection of protester's proposal is denied where proposal lacked required option year pricing.

DECISION

Manthos Engineering, LLC., of Honolulu, Hawaii, protests the award of a contract to TEC, Inc., under request for proposals (RFP) No. DTMA1R09008, issued by the U.S. Department of Transportation, Maritime Administration, for assistance in upgrading the harbors in Hawaii. Manthos complains that the agency improperly evaluated its cost proposal.

We deny the protest.

The RFP, which contemplated the award of a cost-reimbursement contract for a 3-year base period with four 1-year option periods, provided that cost would be evaluated by adding the total proposed cost for the base period and all option periods. RFP at 72. The RFP also stated that the agency intended to make award on the basis of initial proposals, without discussions. *Id.* at 65. Manthos submitted a cost proposal for the base period, but did not include any pricing for the option periods. Protest at 5; Agency Report at 4. The agency did not reject the proposal but, instead, attempted to calculate option prices from the information included in the proposal. The agency ultimately determined that TEC's proposal, not Manthos's, represented the "best value," and thus made award to TEC. Manthos challenges the evaluation and selection decision on several grounds.

The protest is without merit. While the agency did not reject Manthos's proposal for failure to include option prices, this omission rendered the proposal unacceptable. In this regard, since offerors were required to provide option year prices and those prices were to be evaluated for purposes of determining the total evaluated price, option prices were a material solicitation requirement. Robotic Sys. Tech., B-271760, May 14, 1996, 96-1 ¶ 229 at 4. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. Cajar Def. Support Co., B-239297, July 24, 1990, 90-2 CPD ¶ 76. Since Manthos did not provide the required option year prices, its proposal did not conform to the material terms of the RFP, and therefore could not be accepted for award. See Joint Venture Penauillie Italia S.p.A; Cofathec S.p.A; SEB.CO S.a.s; CO.PEL.S.a.s., B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 6.

Manthos argues that the agency should have permitted Manthos to provide its missing option year prices through clarifications. We disagree. In this regard, clarifications are "limited exchanges" agencies may use to allow offerors to clarify certain aspects of their proposals or resolve minor or clerical mistakes. Federal Acquisition Regulation (FAR) § 15.306(a)(2). As is relevant here, an agency may allow an offeror to correct a mistake or clerical error in a cost or price proposal through clarifications only where both the existence of the mistake and the amount intended by the offeror are apparent from the face of the proposal. Joint Venture Penauillie, *supra*, at 8. Here, while it was clear from Manthos's proposal that the option year pricing had been omitted, the proposal specifically stated that "Option Years 1 through 4 will also be priced upon request." Cost Proposal at 8. Based on this statement, it is clear that the omission was not a mistake—despite the clear requirement in the RFP for option year prices, Manthos purposely omitted them from its proposal. Under these circumstances, the option prices could not be added through clarifications.

Manthos also challenges the evaluation of its technical proposal and argues that the agency improperly failed to adhere to the solicitation criteria. Because we conclude that Manthos's proposal was unacceptable, these issues are academic. Argon ST, Inc., B-401387, Aug. 6, 2009, 2009 CPD ¶ 33.

The protest is denied.

Lynn H. Gibson
Acting General Counsel