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Decision

Matter of: Harris IT Services Corporation

File: B-408546.2; B-408546.3

Date: October 31, 2013

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Scott Garner, Esq., Richard Tschampel, Esq., Sharon Woods, Esq., Harold Cohn, Esq., Amy Weisman, Esq., Cheryl Parker, Esq., Susanna Torke, Esq., and Mark Munson, Esq., Department of the Navy, for the agency.
Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's price evaluation is denied where the agency's evaluation record reasonably supports the agency's determination that the awardee's proposed price was reasonable, realistic, and balanced.

2. Protester fails to draw any logical connection between the Navy's determination that the program manager engaged in an "adulterous relationship" with an employee of a contractor providing support for this procurement and the protester's assertion that selection of the awardee was improper.

DECISION

Harris IT Services Corporation, of Dulles, Virginia, protests the Department of the Navy's award of a contract to Hewlett Packard Enterprise Services, of Plano, Texas, pursuant to request for proposals (RFP) No. N00039-12-R-0009, to provide information technology (IT) intranet services for the U.S. Navy and U.S. Marine Corps at locations worldwide.

We deny the protest.

BACKGROUND

In May 2012, the agency published the solicitation at issue, seeking proposals to provide end-to-end secure IT intranet services for the Navy and Marine Corps.[1] The procurement at issue is the successor to the NMCI, and is generally referred to as Next Generation Enterprise Network (NGEN).[2] The solicitation's requirements are divided into two segments: transport services (TXS)[3] and enterprise services (ES).[4] The solicitation contemplated the award of either a single fixed-price indefinite-delivery/indefinite-quantity (ID/IQ) contract to perform both the ES and TXS requirements, or two fixed-price ID/IQ contracts--one to perform the TXS requirements and the other to perform the ES requirements. AR at 6-7. The solicitation provided that offerors could submit proposals to perform only the TXS requirements, only the ES requirements,[5] or combined proposals to perform all of the requirements.[6] Id.

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[1] The Navy operates one of the largest intranets in the world; this system is referred to as the Navy Marine Corps Internet (NMCI). The NMCI provides end-to-end secure IT services to more than 400,000 seats and 800,000 users, at over 2,500 Navy and Marine Corps locations both inside and outside the continental United States. The contract establishing the NMCI was competitively awarded to Electronic Data Systems (EDS) in October 2000. Agency Report (AR) at 3.

[2] In July 2010, the NMCI contract expired, and the Navy awarded a bridge contract, referred to as the Continuity of Services Contract (CoSC) to Hewlett Packard (the successor corporation to EDS) on a sole source basis. AR at 5.

[3] The TXS portion of the solicitation requirements includes operation and maintenance of the network infrastructure from the wall plug to the service delivery point of the Defense Information Systems Agency (DISA) operated Defense Information Systems Network. The TXS infrastructure includes interior and exterior cable plant and associated routers, switches, boundary suites (intrusion prevention system, firewall, and virtual private network devices and software) and local area network/base area network components. It does not include the wide area network that will be provided by DISA's DISN services. AR at 1.

[4] The ES portion of the solicitation requirements includes operation and maintenance of the network infrastructure from the transport segment to the end user, Enterprise Service Desk, seat services supporting end user devices (computers and personal digital assistants), and data center services such as storage, email, and application hosting. AR at 1.

[5] Offerors proposing to perform the ES segment of the requirements were required to submit alternate proposals. The first alternative proposal (referred to as scenario 1) was based on the assumption that end user hardware (primarily desktop or laptop computers for IT users) will be provided as government furnished property (for which $150 million would be added to the evaluated price). The second

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The solicitation established various non-price evaluation factors, to be evaluated on an acceptable/unacceptable basis,[7] and provided that award would be made on the basis of the technically acceptable proposal or proposals that offered the lowest total price to the government for performance of all solicitation requirements. RFP at 336. With regard to proposed price, offerors were required to provide detailed prices, in formats specified by the solicitation, for multiple services, labor rates, and materials. RFP at 328-32. The solicitation required each offeror to provide a basis of estimate for its proposed price which "clearly and concisely state[s] the scope, pricing basis, allowances, assumptions, exclusions, risks and opportunities, and any deviations." RFP at 330.

With regard to the evaluation of price, the solicitation stated that the agency would consider whether the fixed prices proposed were reasonable, elaborating that "[a] price is considered reasonable if it does not exceed what a prudent person in the conduct of competitive business would incur or is not unreasonably low," adding that "[n]ormally, competition establishes price reasonableness." RFP at 339. The solicitation further provided that the agency would "analyze the proposals to determine if prices are materially balanced or unbalanced . . . either between CLINs, or between base and option years." Id.

Finally, of relevance to this protest, the solicitation advised offerors that the agency intended to use Booz Allen Hamilton, along with other identified contractors, to assist in the source selection process.[8] RFP at 333. No objections regarding the intended contractor support were received from any offeror, including Harris.

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alternative proposal (referred to as scenario 2) was based on the assumption that end user hardware will be provided as contractor furnished property. AR, exh. 14, RFP at 310, 313-34. Under scenario 2, offerors could offer to acquire and provide the existing, in place, end user hardware being used to perform the CoSC, (method A, referred to as scenario 2A), or to provide replacement end user hardware (method B, referred to as scenario 2B). AR at 7. [Redacted.]

[6] The solicitation provided that, if an offeror submitted a proposal for only the ES or the TXS segment, and there was no proposal received for the counterpart segment, the segment proposal would not be evaluated. AR, exh. 14, RFP at M-2(a).

[7] The non-price factors were technical approach, management approach, small business participation and subcontracting plan, and past performance. AR, exh. 14, RFP at 336.

[8] In connection with providing such support, Booz Allen Hamilton provided the agency with a non-compete letter. This letter stated, among other things, that "Booz Allen will neither directly compete for the Next Generation Enterprise Network (NGEN) procurement nor seek a subcontractor role with another company
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In August 2012, proposals were submitted by Hewlett Packard, Harris, and Computer Sciences Corporation (CSC). Harris proposed only to perform the TXS services; Hewlett Packard submitted combined proposals to perform both TXS and ES services,[9] and CSC submitted combined proposals to perform both TXS and ES services, as well as separate proposals to perform the ES services.[10] Thereafter, the agency evaluated all of the proposals, found all of them to have material deficiencies, and opened discussions with all of the offerors.

Discussions were conducted from December 2012 through March 2013 and consisted of multiple rounds of written questions, face-to-face sessions, and telephonic discussions. AR, attachs. 25, 26. During these discussions, multiple flaws were identified in all of the proposals, including various areas in which the proposals contained exceptions to, variations from, and inaccurate assumptions regarding the solicitation's stated requirements. Id.; AR at 15-16.

Numerous pricing questions were also asked of each offeror, including questions regarding significant differences in prices among offerors, and significant differences between proposed prices and CoSC prices for comparable activities.[11] AR, attachs. 25, 26. Pricing questions were also asked where the agency questioned the sufficiency of proposed prices for labor, hardware and/or for the software to perform the PWS requirements consistent with the proposed technical approach. Id. Additionally, pricing questions were asked when prices appeared to be unreasonably high, unrealistically low, or unbalanced between CLINs or

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competing for this procurement." The letter also added, "Booz Allen will not consult with other companies for the purposes of competing for the NGEN procurement." AR, exh. 51, Letter from Booz Allen Hamilton to Department of Navy, Jan. 4, 2008.

[9] Hewlett Packard submitted a combined proposal reflecting [redacted]. Hewlett Packard submitted another combined proposal reflecting [redacted]. AR at 15.

[10] CSC submitted combined proposals under [redacted], and separate ES proposals under [redacted]. AR at 15.

[11] The agency states that, while there are similarities between the CoSC and NGEN requirements, there are also various differences in contract pricing and structure. For example, the CoSC includes prices for usage of the CoSC infrastructure; NGEN provides such infrastructure as GFP. AR at 17. CoSC requires the contractor to provide all software necessary for the basic network services; NGEN provides some of the core end user software as GFP. Id. CoSC pricing is based on seats; NGEN pricing identifies overarching operation and sustainment CLINs (007, 008, 009, and 0010). Id. Finally, the agency states that quantities of items and services ordered under CoSC are different from NGEN quantities in many areas. Id.

performance years. Id.; AR at 17-18. These questions sought either price adjustments or explanations from the offerors.

The first set of final proposal revisions (FPR) were submitted on April 8 and evaluated thereafter. Based on this evaluation, the agency again concluded that all of the proposals contained unacceptable assumptions, deviations, and qualifications with regard to the solicitation's requirements. Accordingly, discussions were reopened on May 17, 2013, and conducted through June 17, with several additional sets of questions provided to, and a face-to-face session conducted with, each offeror. AR, attachs. 33, 34. A second set of FPRs was submitted on June 18. AR at 20.

Following the agency's evaluation of the June 18 FPRs, all of the proposals were determined to be technically acceptable with the following evaluated prices, which the agency determined were reasonable, realistic and balanced:

Hewlett Packard	**Hewlett Packard**	**CSC + Harris**	**CSC**	**CSC + Harris**	**CSC**
Combined Scenario [redacted]	Combined Scenario [redacted]	ES Segment Scenario [redacted] + TXS Segment	Combined Scenario [redacted]	ES Segment Scenario [redacted] + TXS Segment	Combined Scenario [redacted]
$3.455B[illion]	$3.494B	**$3.589B**	$3.620B	$3.747B	$3.779B

AR at 21.

On June 20, based on the determination that Hewlett Packard's combined scenario [redacted] proposal, with an evaluated price of $3.455 billion, would result in the lowest price to the government, the agency selected that proposal for award.

On June 24, following an internal Navy investigation, the Navy's program manager responsible for management of the NMCI/CoSC/NGEN program was relieved of his duties "due to a loss of confidence in his ability to lead." AR at 21; Agency Motion to Dismiss, July 25, encl. 1, at 1. The Navy investigation was conducted in response to an allegation that the Navy program manager had "been having an adulterous relationship with [a named female] that began while [the named female] was a Booz Allen Hamilton (BAH) contractor support employee supporting [the Navy program manager]." Report of Investigation, SPAWAR No. 2013-01, May 29, 2013, at 1. The investigation concluded that the Navy program manager had "committed adultery [with the BAH employee] in violation of UCMJ [Uniform Code of Military Justice] Article 134" and "displayed conduct unbecoming an officer and a gentleman . . . in violation of UCMJ Article 133." Id. at 3, 22.

On June 27, the NGEN contract was awarded to Hewlett Packard. Thereafter, Harris filed these protests challenging that award.[12]

DISCUSSION

Harris's protests present two allegations: (1) that the agency failed to perform a proper price evaluation; and (2) that the contracting officer "failed to investigate whether [the Navy program manager's] behavior had impacted the integrity of the procurement." Protest at 14. As discussed below, neither allegation provides a basis to sustain the protest.

Price Evaluation

First, Harris complains that the agency failed to perform a proper price evaluation. In this regard, Harris asserts that Hewlett Packard's price "was unreasonably low" and that the agency "unreasonably confined its price realism analysis to comparing the Offerors' proposals with each other and with historical CoSC pricing." Harris concludes that "[h]ad the Navy properly conducted a price realism analysis, it would have determined that [Hewlett Packard's] price was unrealistic." Protest, July 15, 2013, at 19-21.

Harris also complains that the agency failed to perform an adequate balancing analysis in connection with its price evaluation. Supp. Protest, Aug. 23, 2013, at 2-10. Harris' assertions are without merit.

Where a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. However, an agency may, as here, provide for price realism analysis in the solicitation for such purposes as measuring an offeror's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide services at little or no profit. See The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 4; Ameriko, Inc., B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. Similarly, in evaluating whether a proposed price is materially unbalanced, an agency properly considers the potential for increased performance risk or the likelihood that the Government will pay an unreasonably high price. Federal Acquisition Regulation (FAR) § 15.404-1(g); Gulf Master General Trading, LLC, B-407941.2, July 15, 2013, 2013 CPD ¶ 210 at 4-5. The

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[12] Harris filed an initial protest on July 15, 2013, and a supplemental protest on August 23. CSC also initially filed a protest challenging the award. Following receipt and review of the agency report responding to its allegations, CSC withdrew its protest.

nature and extent of an agency's evaluation are matters within the sound exercise of the agency's discretion, and in reviewing that evaluation, our Office will not reevaluate proposals; rather, we will examine the evaluation record to ensure that it was reasonable, consistent with the solicitation's stated criteria and applicable procurement statutes and regulations, and adequately documented. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2.

Here, the agency's extensive contemporaneous evaluation record supports the agency's determination that Hewlett Packard's final evaluated prices were reasonable, realistic and balanced. First, as discussed above, the agency conducted multiple rounds of discussions with each offeror, during which the agency questioned numerous areas of all the proposals, including Hewlett Packard's, with regard to compliance with the solicitation requirements. Following that comprehensive evaluation, the agency concluded that Hewlett Packard's proposal was acceptable under all of the non-price evaluation factors. Nothing in Harris' protests meaningfully suggests that Hewlett Packard does not understand the contract requirements, or that Hewlett Packard's proposal does not offer to meet those requirements. Rather, Harris' protests are based on arguments that the agency should have considered additional information. For example, Harris complains that, in performing its price realism analysis, the agency "did not prepare an independent government estimate, consult price lists, or obtain pricing through market research," and that the agency's balancing analysis focused on unit pricing rather than total pricing.[13] Protest at 19; Supp. Protest at 3-4.

In contrast, the agency's evaluation record reflects an extensive consideration of the offerors' proposed prices. For example, the record shows that the agency first reviewed Hewlett Packard's proposal to determine that it was "fully complete [and] mathematically accurate." AR, attach. 39, Final PEB Report, at 59. The agency then compared the CLIN prices of Hewlett Packard's proposal for the base year and all option years to the prices of the other offerors' proposals. Id. at encl. 12. When comparing prices, the agency computed the average proposed prices, identified the high and low price range, and calculated a coefficient of variation for hundreds of CLINs. Id. As an additional level of analysis, the agency grouped various CLINs together to identify the average price drivers for the proposals and then compared the prices of each proposal for those groups. AR, attach. 39, at 6-8. In addition to comparing the offerors' CLIN prices to each other, the agency also compared them when applicable, against the CoSC prices for similar CLINs. Id. at 59; AR at 31-32.

The agency's evaluation record similarly documents the agency's evaluation of the offerors' proposed labor rates, averaging the proposed rates for each labor

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[13] We note that Hewlett Packard's total evaluated price of $3.455 billion was less than 5 percent below the $3.589 billion evaluated price of the CSC/Harris proposals.

category, identifying the high and low proposed rates, and calculating a coefficient of variation for each. AR, attach. 39, at encl. 12. The agency also evaluated each offeror's total compensation plan by comparing each offeror's professional employee salaries against similar salary information found under Salary.com, and it conducted a comparative assessment of fringe benefits. AR, attach. 28, Initial PEB Report, at 80. Finally, the agency assessed the offerors' proposed material discounts and material charge rates, by comparing them against the average proposed rates, determining the high-low range and calculating a coefficient of variance. AR, attach. 39, at encl. 12.

Based on our consideration of the entire record in this matter, we find no basis to question the agency's determination that Hewlett Packard's proposed price was reasonable, realistic, and balanced. We have considered all of Harris' various arguments challenging the agency's price evaluation and find no merit in them. Rather, Harris' complaints merely reflect its disagreements with the agency's multiple, documented judgments and, as such, provide no basis for sustaining its protest.

Procurement Integrity

Next, Harris asserts that award to Hewlett Packard was improper due to the personal relationship between the Navy's NMCI/NGEN program manager and a Booz Allen Hamilton employee who was providing program support. Specifically, Harris asserts that the contracting officer failed to comply with the FAR provisions implementing the procurement integrity requirements of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107 (West 2013), known as the PIA.[14] In support of this argument, Harris complains that the agency "did not review whether [the program manager's] 'unprofessional conduct' extended beyond his improper relationship with the contractor employee," and that "the Contracting Officer should have investigated whether the [Booz Allen Hamilton employee] or [the Navy program manager] stood to benefit if [Hewlett Packard] won the award." Protest, July 15, 2013, at 15, 17.

Our Bid Protest Regulations provide that protests must set forth a detailed statement of the factual grounds of protest. 4 C.F.R. § 21.1(2013). In this regard, a protester's unsupported allegations which amount to mere speculation are insufficient to form a basis for protest. See, e.g., Drytech, Inc., B-246276.2,

[14] Harris' protest specifically references FAR § 3.104--which implements the Procurement Integrity Act. Protest at 14-18. Nonetheless, in responding to the agency's arguments that Harris failed to comply with the timeliness requirements of the Act, Harris asserts that it "never claimed that [the program manager's] alleged adultery gave rise to a Procurement Integrity Act (PIA) violation." Harris Supp. Comments, Sept. 9, 2013 at 4.

Apr. 28, 1992, 92-1 CPD ¶ 398 at 9; Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588 at 4.

Here, Harris's multiple protest submissions have failed to draw any logical connection between the "adulterous relationship" of the Navy program manager and the Booz Allen Hamilton employee, and Harris's assertion that the selection of Hewlett Packard was somehow improper. As discussed above, the solicitation expressly advised offerors that Booz Allen Hamilton employees would provide procurement support for the NGEN contract.[15] Further, Harris has failed to provide any information that in any way suggests that either of these individuals had any association with Hewlett Packard. On this record, Harris' assertions that the Booz Allen Hamilton employee or Navy program manager may have "stood to benefit" from the award to Hewlett Packard and that the contracting officer had an obligation to further investigate the matter fails to state a basis for protest. Accordingly, this portion of Harris's protest is dismissed.

The protests are denied in part and dismissed in part.

Susan A. Poling
General Counsel

[15] Consistent with the solicitation's notification, the record shows that both the Navy program manager and the Booz Allen Hamilton employee executed Non-Disclosure/Conflict of Interest certifications with regard to the NGEN procurement. Agency Motion to Dismiss, July 25, 2013, encl. 4.