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## Decision

**Matter of:** Hewlett Packard Enterprise Company

**File:** B-413444.4; B-413444.5

**Date:** January 18, 2017

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Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest arguing that the agency will not conduct a price realism analysis in a reasonable manner during corrective action is dismissed as premature.
  2. Protest challenging the agency's decision to conduct discussions during corrective action, and the scope of those discussions, is denied where the agency reasonably concluded that limited discussions were needed to address the acceptability of the price proposals.
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### DECISION

Hewlett Packard Enterprise Company (HPEC), of Herndon, Virginia, protests the corrective action undertaken by the Department of the Army, Army Materiel Command--Aberdeen Proving Ground Huachuca Division, in response to HPEC's protest of the award of a contract to IronBrick Associates, of Vienna, Virginia, under request for proposals (RFP) No. W91RUS-16-R-0002 for information technology support services. HPEC argues that the Army's corrective action will likely result in an unreasonable price realism analysis, and that the agency conducted discussions in an unreasonable manner.

We dismiss in part and deny in part the protest.

## BACKGROUND

The RFP was issued on December 21, 2015, and sought proposals for support of the Global Enterprise Fabric, which is a cloud enterprise environment that will provide the Army a complete suite of computing enterprise services under three broad areas: infrastructure as a service, network services, and computer network defense. RFP at 3. The solicitation anticipated the award of a fixed-price contract for the delivery of required products and associated monthly services. Award was to be made to the offeror that submitted the lowest-priced, technically-acceptable proposal. Id. at 40. The RFP stated that prices would be evaluated as follows: “[The agency] shall evaluate the offeror’s understanding of the [statement of objectives] technical requirements and the risk associated with the offeror’s technical [proposal]. Offeror[s] may be required to provide documentation supporting the realism of costs proposed.” Id. at 41.

The Army received proposals from 13 offerors by the closing date of May 27, 2016. The agency concluded that three of the offerors, including HPEC and IronBrick, submitted acceptable proposals. Agency Report (AR), Tab 14, Source Selection Decision Document, at 2.<sup>1</sup> The agency found that IronBrick offered the lowest price, and HPEC offered the second-lowest price. Id. The Army therefore selected IronBrick’s proposal for award.

HPEC received a post-award debriefing and filed a protest with our Office (B-413444) on July 25 challenging the award to IronBrick. The protester argued that the awardee’s proposal took exception to a material solicitation requirement, which rendered its proposal technically unacceptable,<sup>2</sup> and that the agency unreasonably evaluated the realism of the awardee’s proposed price. Protest (B-413444) at 10-16. The protester also filed a supplemental protest challenging the awardee’s compliance with the page limitation requirement. Protester’s Comments (Sept. 6, 2016) and Supp. Protest (B-413444.2) at 18-23.

The Army requested that we dismiss the price realism argument because, in the agency’s view, the RFP did not require such an evaluation. See Agency Request for Dismissal (Aug. 12, 2016) at 4. We declined to dismiss the argument based on

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<sup>1</sup> References to the agency report are to the documents provided by the agency in response to the initial protests (B-413444, B-413444.2); the protester’s request for a recommendation for reimbursement of its protest costs in connection with the first two protests (B-413444.3); and the current protests (B-413444.4, and B-413444.5). The agency report for each additional protest added new documents.

<sup>2</sup> Our Office dismissed this argument on August 18, concluding that it failed to state a valid basis of protest. GAO Email (Aug. 18, 2016) (citing Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4), 21.1(f), 21.5(f)).

the agency's request, concluding that the issue of whether the solicitation required the agency to evaluate the realism of proposed prices was a matter to be decided on the merits, and was therefore not appropriate for dismissal. GAO Email (Aug. 18, 2016).

On September 22, the Army advised our Office that it would take corrective action in response to the protest. The agency stated that it would "conduct discussions with the technically-acceptable offerors, request revised price proposals compliant with the terms of the solicitation from those offerors, re-evaluate and issue an award decision." Notice of Corrective Action (Sept. 22, 2016) at 1. Based on the agency's notice, we dismissed the protest as academic on September 23.

On October 5, the Army advised IronBrick and HPEC that their proposals "did not provide the required Labor spreadsheet as required in Section L, Paragraph 5" of the RFP, and requested that the offerors submit the spreadsheets. AR, Tab 24a, Letter to HPEC (Oct. 5, 2016), at 1; Tab 24b, Letter to IronBrick (Oct. 5, 2016), at 1. Offerors were not permitted to revise their proposed prices.

On October 11, HPEC filed a request (B-413444.3) that our Office recommend that the Army reimburse the protester's costs of filing and pursuing its protest concerning the award to IronBrick.<sup>3</sup> On October 12, HPEC filed the instant protest challenging the corrective action, arguing that the agency's request for revisions to the price proposals was inadequate to address the issues raised in the initial protest, and therefore did not constitute adequate corrective action. On October 27, the Army filed its response to the request for a recommendation of reimbursement. As discussed in detail below, the Army stated that it took corrective action based on its conclusion that the offerors who submitted technically-acceptable proposals did not submit worksheets which contained required information regarding the calculation of labor prices. Agency Memorandum of Law (MOL) (B-413444.3) at 3. On November 7, HPEC filed a supplemental protest challenging the corrective action, arguing that the agency's October 27 response demonstrated that the agency failed to evaluate the realism of the proposed prices in connection with the initial award, which in turn shows that the agency will not properly evaluate prices in the corrective action.

## DISCUSSION

HPEC argues that the Army's corrective action is insufficient because the agency will likely conduct an unreasonable price realism analysis, and the agency

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<sup>3</sup> Our Office is reviewing the request for a recommendation for reimbursement, and will issue a separate decision addressing the protester's request.

conducted discussions in an unreasonable manner. For the reasons discussed below, we find no basis to sustain the protest.<sup>4</sup>

#### Price Realism Evaluation

HPEC first argues that the record does not show that the Army conducted a reasonable price realism evaluation in connection with the initial award, and that the agency therefore might not conduct a reasonable price realism analysis as part of the pending corrective action. For the reasons discussed below, we dismiss this argument as premature.

As a general matter, when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable. Federal Acquisition Regulation § 15.402(a). An agency may, however, conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror's low price reflects a lack of technical understanding or performance risk. *Id.* § 15.404-1(d)(3); Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

The Army's response to the current protest of the corrective action states that the agency will evaluate the realism of the technically acceptable offerors' proposed prices. MOL (B-411344.4, B-411344.5) at 6. HPEC contends that the agency's initial refusal to recognize that the RFP required a price realism evaluation, discussed above, indicates that the agency will not likely conduct a reasonable price realism analysis. Protester's Comments (Nov. 28, 2016) at 4. The protester also argues that the agency's independent government cost estimate is flawed, and that there is no indication in the record as to whether the agency will correct what the protester believes are errors in that estimate. *Id.* at 4-5.

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<sup>4</sup> Although HPEC raises other collateral issues that we do not discuss, we have reviewed all of the protester's arguments and find that none provide a basis to sustain the protest. For example, HPEC argues that the corrective action, which is limited to certain price evaluation issues, is unreasonable because it does not address the protester's other price and technical evaluation arguments. As our Office has found, however, an agency's corrective action need not address every protest issue, but must render the protest academic by granting the requested relief. See SOS Int'l, Ltd., B-407778.2, Jan. 9, 2013, 2013 CPD ¶ 28 at 2-3. Here, the agency granted the requested relief by stating that it would conduct a new evaluation and make a new award decision, under which HPEC is eligible for award. In the event the protester is not the successful offeror following the agency's corrective action, it may file a protest challenging the issues not addressed in the agency's corrective action, consistent with our Bid Protest Regulations.

To the extent the protester contends that the Army will not conduct a reasonable price realism evaluation as part of the agency's corrective action, this argument is premature as it merely anticipates that the agency will evaluate proposals unreasonably and in a manner inconsistent with the terms of the RFP. Our Office assumes that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and we will not consider a protest allegation which speculates that an agency will not evaluate proposals in the manner set forth in the solicitation. DGC Int'l, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3. In the event the protester is not the successful offeror following the agency's corrective action, it may file a protest challenging the price realism evaluation, consistent with our Bid Protest Regulations.

### Discussions During Corrective Action

Next, HPEC argues that the Army's decision to conduct discussions during corrective action, which were limited to revisions to a portion of the price proposals, was unreasonable because there was no need to request revisions from the protester, and thus no basis to allow the awardee to revise its proposal. The protester also argues that, even if it was reasonable for the agency to conduct discussions, the agency unreasonably limited the scope of those discussions. For the reasons discussed below, we find no basis to sustain the protest.

As discussed above, the Army's proposed corrective action in response to the initial protest stated that it would "conduct discussions with the technically-acceptable offerors, request revised price proposals compliant with the terms of the solicitation from those offerors, re-evaluate and issue an award decision." Notice of Corrective Action (Sept. 22, 2016) at 1. The Army's response to HPEC's request for a recommendation for reimbursement of its costs for pursuing its initial protest explained that, as part of the agency's review of the record, the agency found that "none of the technically acceptable offerors had submitted a price proposal which complied with the requirements of Section L, Paragraph 5 of the solicitation." MOL (B-413444.3) at 3. In this regard, the RFP required offerors' price proposals to "include a spreadsheet in the contractor's own format that details the labor calculation of its proposed monthly fixed prices for services." RFP at 40. The Army's response to the current protest affirmed that the offerors' failure to meet the requirements of this RFP provision was the basis for its decision to take corrective action. MOL (B-411344.4, B-411344.5) at 3.

HPEC argues that its proposal met the RFP's price proposal requirements. The protester argues, therefore, that the Army had no basis to request proposal revisions because the awardee's proposal was unacceptable and the protester's proposal was acceptable. Instead, the protester contends, the agency should have awarded it the contract as the offeror with the lowest-priced, acceptable proposal. We conclude that the record supports the agency's conclusion and decision to take corrective action.

HPEC's initial price proposal provided information regarding each contract line item number (CLIN), which were for different performance locations; the units to be provided for each CLIN (number of systems per location); the extended price for each CLIN; and the "Labor Component of monthly support services." AR, Tab 11, HPEC Initial Price Proposal, at 1. The labor component information was a single amount for each CLIN, which did not specify the components of that amount, *i.e.*, the labor hours or rates. Id. HPEC's revised price proposal, which was submitted in response to the agency's request during corrective action, [DELETED]. AR, Tab 26, HPEC Labor Spreadsheet, at 1. IronBrick's initial proposal provided prices for each CLIN, but did not identify any information concerning the labor component of its proposed price. AR, Tab 10, IronBrick Price Proposal, Sheet 1; Appendix B.

In sum, the record shows that IronBrick provided no information concerning the components of its monthly labor price, while HPEC provided only the total amount for the labor, without addressing the basis for calculating that amount. We therefore conclude that the Army reasonably found that neither firm's proposal met the requirement of the RFP to provide "the labor calculation of its proposed monthly fixed prices for services." RFP at 40.

Next, HPEC argues that even if it was reasonable for the agency to conduct discussions, the agency unreasonably limited those discussions to the changes in the offerors' supporting data for their price proposals. The protester contends that the agency should have allowed offerors to submit revised prices, as well. In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure a fair and impartial competition. Intermarkets Global, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 3. An agency's discretion in the area of corrective action extends to deciding the scope of discussions and proposal revisions. Power Connector, Inc., B-404916.2, Aug. 15, 2011, 2011 CPD ¶ 186 at 3.

As a general matter, offerors, in response to discussions, may revise any aspect of their proposals as they see fit, including portions of their proposals which were not subject to discussions; an agency, in conducting discussions to implement corrective action, may, however, reasonably limit the scope of revisions. System Planning Corp., B-244697.4, June 15, 1992, 92-1 CPD ¶ 516 at 3-4. Where the corrective action does not also include amending the solicitation, we will not question an agency's decision to restrict proposal revisions when taking corrective action so long as it is reasonable in nature and remedies the established or suspected procurement impropriety. See Consolidated Eng'g Servs., Inc., B-293864.2, Oct. 25, 2004, 2004 CPD ¶ 214 at 3-4. In reviewing the reasonableness of an agency's restrictions on proposal revisions in the context of discussions to implement corrective action, we will consider whether the discussions, and permitted revisions in response to discussions, are expected to

have a material impact on other areas of the offeror's proposal. Evergreen Helicopters of Alaska, Inc., B-409327.3, Apr. 14, 2014, 2014 CPD ¶ 128 at 8.

Here, as discussed above, the Army states that the discussions were limited to the offerors who submitted technically-acceptable proposals, but whose price proposals did not meet the requirements of the RFP regarding the labor worksheet. MOL (B-411344.4, B-411344.5) at 3, 8-9. The protester does not contend that the proposal revisions requested by the agency affect other areas of the offerors' proposals. Rather, the protester argues that the agency should have allowed offerors to make more substantial changes to their proposals, including revised prices. On this record, we conclude that the Army reasonably limited the revisions to the price proposals to those areas that required revision to meet the RFP requirements. See Evergreen Helicopters of Alaska, Inc., *supra*. The protester's disagreement with the agency's judgement here, without more, does not provide a basis to sustain the protest.

Finally, HPEC argues that the Army's corrective action treats the protester and awardee unequally, to the extent that the awardee's price proposal required more extensive revisions than the protester's. As discussed above, however, we conclude that the agency reasonably found both offerors' proposals to be unacceptable and to require revision. On this record, we find no merit to the protester's argument that the agency treated the offerors unequally where it required both to meet the same solicitation requirement.<sup>5</sup>

The protest is dismissed in part, and denied in part.

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General Counsel

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<sup>5</sup> To the extent HPEC argues that the Army's actions reflect unequal treatment or bias that are tantamount to bad faith, we find no basis to sustain this argument. In this regard, government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition or unsupported speculation. BAE Sys. Tech. Solutions & Servs., Inc., B-409914, B-409914.2, Sept. 16, 2014, 2014 CPD ¶ 322 at 11. Here, we do not find that the protester's complaint that the awardee's proposal required more extensive revisions to meet the requirements of the RFP, as compared to the protester, constitutes convincing proof of bad faith on the part of the Army.