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Decision

Matter of: Mancon, LLC

File: B-417571.5; B-417571.6

Date: May 12, 2020

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G. Matthew Koehl, Esq., and Gary J. Campbell, Esq., Womble Bond Dickinson (US), LLP, for Noble Supply and Logistics, Inc., the intervenor.
Andrew Christopher, Esq., Department of the Navy, 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 challenging an agency's reevaluation of the protester's and the awardee's technical proposals as part of corrective action in response to an earlier protest is denied where the record shows that the reevaluation was reasonable, and in accordance with the terms of the solicitation.
 2. Protest challenging the awardee's price proposal as noncompliant with the solicitation's instructions is denied where the record shows that the awardee complied with the instructions and its proposal provided no reason for the agency to conclude otherwise.
 3. Protest alleging that awardee's pricing is unrealistically low is dismissed where the protester fails to demonstrate that the solicitation provided for a price realism evaluation.
 4. Protest alleging that awardee's pricing is unbalanced is dismissed where the protester fails to make the threshold showing that one or more of the awardee's prices was overstated, and, where the agency evaluated the risk of unbalanced pricing and reasonably determined that the risk of unbalanced pricing was low.
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DECISION

Mancon, LLC, of Virginia Beach, Virginia, protests the award of a contract to Noble Supply and Logistics, Inc. (Noble) of Rockland, Massachusetts, under request for proposals (RFP) No. N00189-18-R-0007, issued by the Department of the Navy for

materials and logistical services in support of the Naval Facilities Mid-Atlantic Public Works Department in Crane, Indiana. Mancon challenges the agency's reevaluation of technical proposals, conducted after the Navy's corrective action following Noble's earlier protest. Mancon also asserts that the agency's evaluation of Noble's price proposal was flawed.

We deny the protest.

BACKGROUND

The RFP, issued on February 8, 2018, contemplated award of a single indefinite-delivery, indefinite-quantity fixed-price contract, with economic price adjustment provisions, on a best-value tradeoff basis. RFP at 67, 113.¹ The solicitation sought proposals for services and supplies necessary to maintain an adequate stock of all parts, materials, and equipment at the Naval support facility in Crane, Indiana, at two contractor-operated parts stores. RFP at 14.

Offerors were advised that proposals would be evaluated under four factors: technical; past performance; small business participation plan; and price. *Id.* at 113-118. The technical factor was comprised of three subfactors: the performance approach, the management approach, and the transition/phase-in plan; among those three, the performance approach subfactor was significantly more important than the management approach and transition/phase-in plan subfactors, which were of equal importance. *Id.* at 113-14. Further, the technical factor was significantly more important than past performance, and past performance was more important than the small business participation plan. *Id.* at 113. The non-price factors were significantly more important than price. *Id.*

Of relevance here, the total evaluated price was to be calculated by adding the offeror's proposed prices for: services for each year of performance; test market basket,² comprising items commonly sold at the Navy stores in Crane; and the total material³ price, reflecting discounted commodity groups. *Id.* at 110, 118. The solicitation instructed that price was to be evaluated for reasonableness, in accordance with Federal Acquisition Regulation (FAR) 15.404-1(b), and the method of evaluation was "solely within the discretion of the [c]ontracting [o]fficer." *Id.* at 118. The RFP required

¹ The solicitation was subsequently amended 20 times. Agency's Req. for Dismissal, exh. 1, RFP at 3-7. All references throughout the decision are to the conformed RFP.

² The test market basket was a list of 303 items most commonly sold at the Navy Crane stores in the past 2 years. Contracting Officer's Statement (COS) at 10.

³ The total material price means the total proposed sale price of materials, or commodities, at the Navy Crane facility.

that the test market basket pricing be “representative of the offeror’s pricing methodology throughout the term of the contract.” *Id.* at 111.

The offerors were requested to include in their price proposals a completed attachment III to the RFP, proposing pricing for the test market basket and the total material (commodities) price; and a completed attachment IV, proposing pricing for services. In addition, offerors were to include any pricing catalogs that were referenced in attachment III. RFP at 118, 111. The solicitation advised that “[c]atalogs may be submitted in electronic and/or hard copy format.” *Id.* at 110.

The agency received timely proposals from five offerors by the closing date of October 30, 2018, including Noble and Mancon. COS at 8. After the technical evaluation board (TEB) evaluated the proposals, the agency awarded the contract to Mancon on April 30, 2019. *Id.* On May 13, Noble filed a protest with our Office (B-417571), followed by a supplemental protest on June 24 (B-417571.2), challenging the agency’s evaluation of the technical and past performance proposals, and the award decision. *Id.* Shortly thereafter, on June 28, the Navy notified our Office that it would take corrective action by conducting discussions, reevaluating proposals, and making a new source selection decision. *Id.* On July 1, our Office dismissed Noble’s protest as academic. *Noble Supply and Logistics, Inc.*, B-417571, B-417571.2, July 1, 2019 (unpublished decision).⁴

As part of the agency’s corrective action, the Navy conducted limited discussions only with Mancon, related to the past performance issues identified in Noble’s supplemental protest. Agency Report (AR), exh. 8, Contract Review Board Presentation (CRBP) at 4; COS at 8. After Mancon revised its past performance proposal, the Navy convened a new TEB to reevaluate the technical proposals of Noble and Mancon that formed the basis of the original award, to ensure a “fair and unbiased” assessment. AR, exh. 10, Final Reevaluation TEB Report at 1; AR, exh. 8, CRBP at 15. The new team was not informed of or provided access to the price proposals received from offerors by the original solicitation closing date. COS at 9.

The agency’s reevaluation of technical proposals resulted in different ratings from those assigned to the proposals under the initial evaluation: while the first TEB evaluated Mancon’s technical proposal as outstanding, and Noble’s technical proposal as good, the second TEB rated both technical proposals as outstanding. AR, exh. 6, Initial TEB

⁴ Following the dismissal of the protest, on July 5, Noble filed a request for reconsideration of our decision to dismiss its protest as academic. Our Office dismissed the request for reconsideration, finding that Noble failed to demonstrate that the underlying dismissal contained legal or factual errors. *Noble Supply & Logistics, Inc.--Recon.*, B-417571.3, July 26, 2019 (unpublished decision). Noble also requested that our Office recommend that the Navy reimburse Noble its reasonable costs of filing and pursuing the protest, which we also denied. *Noble Supply & Logistics, Inc.--Costs*, B-417571.4, Nov. 27, 2019, 2019 CPD ¶ 411.

Report at 4; AR, exh. 10, Final Reevaluation TEB Report at 4. Specifically, the second TEB identified additional strengths in Noble’s proposal, and raised Noble’s ratings for two of the three subfactors under the technical factor.⁵ AR, exh. 8, CRBP at 20-21.

The contracting officer conducted a reconciliation of the strengths and weaknesses identified by the prior TEB and the TEB convened for the reevaluation. AR, exh. 8, CRBP at 18-22. Ultimately, she concurred with the technical ratings assigned by the new TEB. COS at 9.

The contracting officer then reevaluated the past performance information identified by Mancon and Noble and assessed their respective past performance proposals as satisfactory. AR, exh. 8, CRBP at 22. She also reviewed the small business participation plans submitted by the two offerors and evaluated them both as good. *Id.* at 32.

Accordingly, the final evaluation of both proposals under the non-price factors was as follows:

	Mancon	Noble
Technical	Outstanding	Outstanding
Performance Approach	Outstanding	Outstanding
Management Approach	Outstanding	Good
Transition/Phase-In Plan	Outstanding	Outstanding
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Small Business Participation Plan	Good	Good

AR, exh. 10, Final Reevaluation TEB Report, at 4; AR, exh. 8, CRBP at 22, 32.

The contracting officer then evaluated Noble’s and Mancon’s price proposals. COS at 10. Because no pricing changes were submitted during the agency’s corrective

⁵ The combined technical/risk ratings were, from highest to lowest: outstanding, good, acceptable, marginal, and unacceptable. RFP at 114. The past performance confidence assessment ratings were: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, and no confidence. RFP at 116-17. The ratings for the small business participation plan were: outstanding, good, acceptable, marginal, and unacceptable. *Id.* at 117.

action, she evaluated the price proposals that formed the basis of the original award. *Id.* For comparison, she used the price proposals submitted by all five offerors in response to the RFP. *Id.*; AR, exh. 8, CRBP at 34-41.

The summary of the pricing proposals was as follows:

	Noble	Mancon	Offeror A	Offeror B	Offeror C	Independent Government Estimate (IGE)
Services	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$4,521,048
Test Market Basket	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$31,387,673
Commodity Totals	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$(DELETED)	\$(DELETED)	
Total Price	\$25,123,428	\$38,515,851	\$39,366,177	\$69,452,463	\$83,793,658	\$35,908,721

Id. at 35.

The contracting officer noticed that Noble’s proposed price for services was [DELETED] percent lower than the IGE and significantly lower than all the other offerors, while Mancon’s proposed price for services was [DELETED] percent higher than IGE and similar to those proposed by offerors A and B. *Id.* at 37. She observed, however, that the solicitation did not provide for a price realism evaluation and that under a fixed-price contract, as here, “the burden of risk is placed on the contractor to ensure that the requirements of the contract are met at the price proposed.” *Id.* The contracting officer reasoned that the TEB’s evaluation “determined that Noble demonstrated an exceptional understanding of the requirement”; hence, she concluded that “Noble’s proposal, in totality, exhibited low performance risk.” COS at 11.

To conduct the evaluation of the total material price, which was the sum of the test market basket pricing and the discounted commodities pricing, the contracting officer reviewed Mancon’s “electronic catalog, submitted in Microsoft Excel format and consisting of approximately 79,680 line items,” and “Noble’s catalog, provided online, as well as a Microsoft Excel version containing 178,340 items.” AR, exh. 8, CRBP at 36. Both catalogs were developed for this requirement. *Id.* at 38-39.

The contracting officer noticed that Noble’s proposed prices for commodities⁶ were also lower than those of other offerors: its overall test market basket price was significantly

⁶ Approximately 96 percent of the estimated total price is for commodities sales. COS at 10. In addition to the test market basket, which was developed to capture 303 commonly sold items, the commodities sales were broken down proportionally by the

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lower than the prices of all the other offerors, and Noble's proposed discounted commodities prices were the lowest of the five proposals compared. COS at 11. She then conducted an unbalanced pricing evaluation of Noble's test market basket items,⁷ in accordance with FAR 15.404-1(g). AR, exh. 8, CRBP at 40.

Specifically, the contracting officer compared the unit prices of each item identified in Noble's test market basket to other offerors' prices. *Id.* She noticed "extensive [price] variation for some items," and conducted market research and used "commercially available pricing" for her analysis. *Id.* The majority of Noble's items, 208 out of 303, were "more than [DELETED]% lower than the average of the other offerors' prices," while 8 items were [DELETED] percent higher. *Id.* at 40-41. After conducting market research based on the commercial marketplace, the contracting officer found comparable pricing for five of the items; the other three, for which she was unable to find comparable pricing, accounted for "approximately 0.85% of the test market basket (and a much smaller amount of the total estimated contract value)"; hence, she concluded that "the overall risk of unbalanced pricing is low." *Id.* at 41; COS at 12.

The contracting officer, who was also the source selection official for the procurement, then documented her decision, concluding that Noble and Mancon were "substantially similar" under the technical evaluation factor, despite Mancon's offering "some modestly superior benefits" under the management approach subfactor. AR, exh. 8, CRBP at 44. She also noted that they received the same ratings under the past performance and small business participation plan factors, and that Noble's proposal was 35 percent less expensive than Mancon's. *Id.* In the end, she determined that the government should not pay a price premium for "some modest additional value" regarding technical strengths offered by Mancon, and that Noble's proposal provided the best value to the government. *Id.*

Following approval by the contract review board, on January 14, 2020, the agency awarded the contract to Noble. After a debriefing, Mancon protested our Office.

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expected percentage sales of each commodity. *Id.* As the agency explained, "[b]ecause it would be difficult for offerors to propose and the Government to evaluate every single item that could be sold, offerors proposed a discount from their commercial or Government-sourced item pricing for the various commodities." *Id.*

⁷ The contracting officer did not conduct an unbalanced pricing analysis for services, noting that they are "ordered through a single CLIN [contract line item number] priced at the same monthly amount for a quantity of sixty months, covering the entire five-year ordering period [, hence] there was no risk of unbalanced pricing with regard to services." COS at 11 n.1.

DISCUSSION

Mancon raises two general challenges to the award to Noble. First, the protester argues that the agency's reevaluation of Noble's technical proposals was improper. In this regard, the protester contends that the agency unreasonably revised Noble's rating under the technical factor from good to outstanding, so that the two proposals became essentially equivalent, making price the determining factor in the new source selection decision which favored Noble's less expensive proposal. Second, Mancon asserts that the Navy's evaluation of Noble's price proposal was unreasonable because the agency failed to adequately consider the risks posed by Noble's unbalanced pricing scheme, and its unrealistic low prices.⁸ We have reviewed all of Mancon's challenges and conclude that that none provides a basis upon which to sustain the protest. We address the principal arguments in detail below.

Reevaluation of Technical Proposal

Mancon asserts that the second TEB unreasonably and "drastic[ally] increase[d]" the assessment of "the same Noble proposal" from good to outstanding. Protest at 17-18. Mancon argues that although the new TEB identified a few additional strengths in Noble's proposal, it still found that Mancon's strengths were "broader in scope," "more comprehensive in nature," and "more all-encompassing than Noble's"; hence, the contracting officer improperly concluded that the two proposals were essentially equivalent.⁹ *Id.* at 17; Comments & Supp. Protest at 14. Mancon contends that the change in Noble's adjectival technical rating was "manipulated" and "intended solely to

⁸ On February 6, 2020, the agency requested dismissal of Mancon's protest as speculative and insufficient, *i.e.*, failing to state legally sufficient grounds of protest. Agency's Req. for Dismissal at 2. On February 12, our Office indicated its intention to grant the agency's request for dismissal of the price realism challenge. The RFP here did not provide for the evaluation of price realism. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required, nor permitted to conduct one in awarding a fixed-price or labor-hour contract. See *Lynxnet, LLC*, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 4. Accordingly, this protest ground is dismissed.

⁹ In its supplemental protest, Mancon also argues that "the [a]gency's contemporaneous documentation of the Technical Evaluation Board's conclusions is inconsistent with the debriefing provided to MANCON and with assertions made in the [a]gency [r]eport." Comments & Supp. Protest at 3. Mancon's assertions in this regard are related to the Reevaluation TEB Report filed as part of the agency report at exhibit 7. The agency explains that it inadvertently included within its report a preliminary draft of the reevaluation report. Supp. Memorandum of Law at 3. Because the agency subsequently provided its "Final Reevaluation TEB Report," we find this protest ground moot.

make the two proposals appear equivalent and thereby justify award to the lower-priced proposal without a best-value tradeoff analysis.” Protest at 18.

Our Office has consistently stated that the fact that an agency’s reevaluation varies from an original evaluation does not constitute evidence that the reevaluation was unreasonable. *DynCorp Int’l, LLC*, B-409874.2, B-409874.3, May 13, 2015, 2016 CPD ¶ 348 at 9. To the contrary, we consider it implicit that a reevaluation could result in different findings and conclusions. *IAP World Servs., Inc.*, B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3. The overriding concern for our review is not whether the evaluation results are consistent with the earlier evaluation results, but whether they reasonably reflect the relative merit of the offers. *Spectrum Comm, Inc.*, B-412395.2, Mar. 4, 2016, 2016 CPD ¶ 82 at 7. A protester’s disagreement with the agency’s judgment is insufficient to establish that an evaluation was improper. *Portage, Inc.*, B-410702, B-410702.2, Jan. 26, 2015, 2015 CPD ¶ 66 at 5.

Our review of the record does not support Mancon’s allegation, nor its charge that the evaluators manipulated the reevaluation to make price the determinative factor in the agency’s tradeoff decision. As a preliminary matter, we find reasonable the agency’s decision to convene a new evaluation board, and conclude that it reflects an effort to ensure a fair and unbiased review of the technical record during corrective action.

Furthermore, the protester has not shown that the TEB improperly assessed additional strengths in Noble’s technical proposal. Specifically, the second TEB identified four strengths in Noble’s technical proposal under the performance approach subfactor, compared to two strengths identified by the first TEB; three strengths and one weakness under the management approach subfactor, compared to two strengths and no weakness identified by the first TEB; and three strengths under the transition/phase-in plan subfactor, compared to no strengths identified by the first TEB. AR, exh. 8, CRBP at 20-21.

Mancon contests the reevaluation under the transition/phase-in plan subfactor. Specifically, the protester asserts that the strengths identified by the second TEB-- Noble’s detailed phase-in plan; its immediate support during the transition period through its mobile internet connections and cloud-based system; and its attempt to buy the incumbent’s commodities stock (reducing time to fully stock the store)--simply reiterated elements of the scope of work, and should have not have been identified as strengths. Comments & Supp. Protest at 15.

We find this contention without merit. The solicitation’s evaluation criteria specified that offerors would be evaluated on their “ability to provide a technical approach that demonstrates a complete understanding of and the capability to fully implement and execute all requirements of the solicitation and PWS [performance work statement].” RFP at 113. We find that the additional strengths assigned to Noble’s proposal by the second TEB are properly attributable to the benefits the evaluators identified in Noble’s proposal. As discussed above, agency evaluators may reasonably reach differing conclusions in the evaluation of offerors. Here, we see Mancon’s challenges to the

Navy's evaluation of Noble's technical proposal as representing only disagreement with the Navy's judgments. We also find the contracting officer's reconciliation of both TEBs' evaluations unobjectionable.

To the extent Mancon argues that the Navy "manipulated" the reevaluation results so that it could "justify award to the lower priced proposal without a best-value tradeoff analysis," we find no support in the record for this allegation. As our Office previously stated, government officials are presumed to act in good faith and a protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof. *Career Innovations, LLC*, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Computers Universal, Inc.*, B-410790.2, Feb. 25, 2015, 2015 CPD ¶ 83 at 3-4. Here, the protest does not include sufficient information to establish that the different ratings assigned by the reevaluation panel were motivated by bias or bad faith. Accordingly, this protest ground is denied.

Evaluation of Noble's Price Proposal

Mancon challenges the agency's evaluation of Noble's price proposal in several respects. As an initial matter, Mancon argues that Noble's price proposal failed to include a price catalog listing fixed prices, as required by the solicitation, and instead, only provided a hyperlink to an online catalog, which could be manipulated or controlled by the awardee. Comments & Supp. Protest at 4-7. Mancon also argues that the agency failed to adequately consider the risk posed by Noble's pricing scheme, which Mancon contends was "significantly unbalanced between the Services CLIN and the Materials CLIN." Protest at 19; Comments & Supp. Protest at 2.

Compliance with the Solicitation Requirements

Mancon argues that Noble's price proposal did not comply with the solicitation because the proposal included only a hyperlink to an online catalog. Hence, in Mancon's view, the proposed price list of commodities "remained under the offeror's control and was not fixed at the time of the offer," in violation of FAR part 16.¹⁰ Comments & Supp. Protest at 2, 7-8.

¹⁰ Mancon also alleges in its supplemental protest that Noble made material misrepresentations about pricing of the items included in the test items basket, because the proposed prices differed from those in Noble's online catalog and Noble's General Services Administration (GSA) Advantage catalog. Comments & Supp. Protest at 1, 8-10. We have reviewed these allegations and find that the RFP did not include a requirement to "cross-check" the proposed prices with a vendor's online or GSA catalogs. Because, as discussed below, Noble included an electronic catalog in its price proposal, as authorized by the solicitation, the protester's allegations in this regard have no merit.

The agency responds that Noble's price proposal complied with the solicitation. Supp. COS at 3. Specifically, the agency points out that an amendment to the RFP allowed for submission of catalogs "in electronic and/or hard copy format," and that Noble's electronic catalog identified more than 178,000 items, and was submitted as a stand-alone Microsoft Excel spreadsheet. RFP at 6; Supp. COS at 3 (referring to exhibit 5b in Noble's price proposal, "Attachment III - Material Price Submission Worksheet amendment 0016 With Commercial Catalog (As Of 2-20-2019) (rev final)"). The Navy also states that Noble's catalog was similar to the one Mancon included in its proposal, as it was also "in Excel format with similar columns and information." Supp. COS at 4.

Our review of the contemporaneous record provides no basis to question the Navy's judgment in accepting Noble's proposal as compliant with the RFP's instructions. The solicitation required offerors to include in their price proposals a completed RFP attachment III (proposing prices for the test market basket and the total material price), and a completed attachment IV (proposing prices for services), as well as any proposed pricing catalogs. RFP at 118, 111. The solicitation also expressly advised that "[c]atalogs may be submitted in electronic and/or hard copy format," and included no other limitations as to their format. RFP at 110. Both Noble and Mancon included electronic copies of their catalogs, developed for this particular requirement, in the form of Excel spreadsheets identified in their price proposals. As relevant here, Noble clearly labeled its submission as the "Crane commercial catalog"; the catalog included fixed prices for commodities, and proposed discounts, in compliance with the solicitation's instructions and FAR part 16. Accordingly, we find that Mancon's argument has no merit.

Allegation of Unbalanced Pricing

Mancon also challenges the agency's failure to consider the risk of unbalanced pricing in Noble's proposal "between the services CLIN and the materials CLIN," and contends there were "numerous excessively priced items" in Noble's catalog. Protest at 19; Comments & Supp. Protest at 2.

Unbalanced pricing exists where the prices of one or more line items are significantly overstated or understated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 5. To prevail on an allegation of unbalanced pricing, a protester must show that one or more prices in the allegedly unbalanced proposal are overstated; it is insufficient for a protester to show simply that some line item prices in the proposal are understated. *Marine Terminals Corp.-East, Inc.*, B-410698.9, Aug. 4, 2016, 2016 CPD ¶ 212 at 11. While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed is the risk posed by overstatement of prices, because low prices (even below cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing. *American Access, Inc.*, B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 5; *Crown Point Sys.*, B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 5.

Additionally, if there is an unbalanced offer, the agency is required to consider the risks to the government that the unbalancing will result in unreasonably high prices during contract performance. FAR 15.404-1(g)(2); *Red River Service Corp.*, B-282634, B-282634.2, July 15, 1999, 99-2 CPD ¶ 31 at 2. Our Office will review for reasonableness an agency's determinations regarding unbalanced prices. *Semont Travel, Inc.*, B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3.

Here, Mancon alleges that Noble's prices for a few items in its Crane commercial catalog excerpt attached to Noble's proposal were outrageous. Comments & Supp. Protest at 2. Notably, these examples provided by Mancon do not concern Noble's test basket items. In this regard, the RFP established a price evaluation methodology that was based on the test market basket and the total material price, reflecting discounted commodities groups. See RFP at 118, 110-111. The prices in offerors' catalogs--including Noble's electronic Crane commercial catalog--were not part of the evaluation of price, and thus cannot form the basis of an unbalanced pricing allegation.

In addition, while Mancon provides a few limited examples of Noble's allegedly excessive prices, the gravamen of Mancon's protest is a central allegation that Noble's prices were unrealistically low. Protest at 18-19 (noting that "Noble's price was below the IGE"). In essence, Mancon is challenging the realism of Noble's prices. *Id.* The RFP, however, did not provide for--and therefore did not permit--a price realism evaluation. Moreover, absent a price realism provision, there is nothing objectionable in an offeror's proposal of low, or even below-cost, prices. *Ultimate Concrete, L.L.C.*, B-412255, B-412255.2, Jan. 13, 2016, 2016 CPD ¶ 20 at 15. Low prices are not *per se* improper and do not, by themselves, establish (or create the risk inherent in) unbalanced pricing. *Diversified Capital, Inc.*, B-293105.4, B-293105.8, Nov. 12, 2004, 2004 CPD ¶ 242 at 2 n.1; *Islandwide Landscaping, Inc.*, B-293018, Dec. 24, 2003, 2004 CPD ¶ 9 at 3.

Finally, with regard to Noble's test market basket prices, our review of the record shows that the contracting officer identified and considered the minimal evidence of unbalanced pricing in Noble's price proposal. As discussed above, she noted that 3 of the 303 items identified in Noble's test market basket, or "approximately 0.85%," were [DELETED] percent higher than items proposed by other offerors. AR, exh. 8, CRBP at 40-41. The contracting officer then concluded that "[t]hese three items represent an insignificant percentage" of the test market basket, as they are a "small number of isolated products out of the tens of thousands of items anticipated to be sold and are not expected to place the Government at significant risk of paying unbalanced prices." *Id.* at 41. Accordingly, she determined that "the overall risk of unbalanced pricing is low." *Id.*; COS at 12.

In our view, the agency has satisfied the FAR's requirements to conduct an unbalanced pricing analysis by reasonably determining that the risk posed to the government was not significant enough to render Noble's proposal unacceptable. We will not disturb an

agency's assessment of the risk posed to it by unbalanced pricing when, as here, the agency reasonably considers the relevant circumstances.

In sum, we find no merit to the protester's challenges to the evaluation of the awardee's proposal under the technical and price factors.

The protest is denied.

Thomas H. Armstrong
General Counsel