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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Jantec, Inc.

File: B-292668; B-292668.2

Date: November 6, 2003

Richard B. Oliver, Esq., McKenna Long & Aldridge, for the protester.
Brian Koji, Esq., Allen, Norton & Blue, for Call Henry, Inc., an intervenor.
Maj. Brent Curtis, Department of the Air Force, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluators reasonably rated protester as very good/significant confidence under predictive preventative maintenance (PPM) past performance subelement where references reported that protester had not performed PPM and rated its performance for maintenance management generally as very good or satisfactory.
2. Evaluators reasonably determined that awardee had proposed an adequate level of staffing where awardee proposed innovations in its approach to the work that reduced the staffing required.
3. Awardee did not improperly condition its offer by stating that if its health insurance costs increased significantly, it would ask the government to consider adjusting the contract price to reflect the extra cost, since the awardee's reservation of the right to request an adjustment did not obligate the government to grant the request.
4. Awardee did not improperly condition its offer by expressing confidence that it would be able to perform using the level of staffing that it had derived based on the workload data furnished in the solicitation.

DECISION

Jantec, Inc. protests the award of a contract to Call Henry, Inc. (CHI) under request for proposals (RFP) No. F04693-02-R-0004, issued by the Department of the Air Force for civil engineering services for Los Angeles Air Force Base (LAAFB). Jantec contends that the Air Force miscalculated its past performance, unreasonably

determined CHI's proposal to be technically acceptable, and failed to perform an adequate price realism analysis of CHI's proposal.

We deny the protest.

The RFP, which was issued on February 24, 2003, contemplated the award of a contract encompassing fixed-price and cost-reimbursable items.¹ The performance period consists of a base year and seven 1-year options.

The RFP provided for the evaluation of proposals on the basis of three factors: mission capability (which was to be evaluated on a pass/fail basis), present/past performance (which was to result in the assignment of a performance confidence rating of exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, or unsatisfactory/no confidence), and price. Both mission capability and past performance were to be evaluated on the basis of the following five subfactors, corresponding to the five major categories of services to be furnished under the contract: information technology (IT) management; real property management; housing management; planning, programming, design, and execution (PPD&E); and program management. Award was to be made to the offeror whose technically acceptable (*i.e.*, passing under mission capability) proposal represented the best combination of present/past performance and price, with present/past performance of significantly greater importance than price. With respect to price, the RFP provided that proposals would be evaluated to determine if the proposed prices, including labor rates, direct and indirect costs, and profit rate, were reasonable and realistic for the work to be performed.

Five offerors submitted proposals in response to the RFP. The source selection evaluation team (SSET) determined four of the proposals to be technically acceptable and eliminated one from the competition as technically unacceptable. The SSET assigned performance confidence ratings of very good/significant confidence to the four offerors that had submitted technically acceptable proposals and determined the prices submitted by all four to be both reasonable and realistic. Of relevance here, for the five categories of services, the evaluators rated CHI as exceptional/high confidence for IT management and as very good/significant confidence for real property maintenance/management, housing management, PPD&E, and program management. Jantec received ratings of very good/significant confidence for IT management, real property maintenance/management, and program management, and ratings of satisfactory/confidence for housing management and PPD&E. CHI's proposed price of \$50,718,424 was lowest, while

¹ The cost-reimbursable line items were for materials, travel, and emergency overtime. Under the RFP, equal fixed dollar amounts were added to all offerors' proposed prices for these categories for evaluation purposes.

Jantec's proposed price of \$52,875,325 was second low. The SSET recommended award to CHI on the basis that its proposal was technically acceptable, it had received a performance confidence rating of very good/significant confidence, and its price was lowest. The source selection authority concurred in the selection of CHI for award, noting that "no other offeror had documented past performance that warranted a higher price." Source Selection Decision at 4. The agency awarded a contract to CHI on July 24. Jantec received a debriefing on July 30 and protested to our Office on August 4.

Jantec argues that the Air Force misevaluated its past performance and should have assigned it an overall performance confidence rating of exceptional/high confidence, as opposed to very good/significant confidence.² Specifically, Jantec takes issue with the performance confidence ratings assigned its proposal for IT management, real property maintenance/management, PPD&E, and program management, arguing that it should have received ratings of exceptional/high confidence for IT, real property, and program management, and a rating of very good/significant confidence for PPD&E.³ Jantec contends that had the agency correctly rated its performance risk as exceptional/high confidence, it would have concluded that Jantec's combination of past performance and price represented the best value to the government.

The evaluation of past performance is a matter within the discretion of the contracting agency. In reviewing an agency's evaluation of past performance, we will not reevaluate proposals, but instead will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation. Acepex Mgmt. Corp., B-280080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3. Here, as explained below, our review of the record persuades us that the past performance/performance confidence ratings assigned the protester's proposal were reasonable and consistent with the RFP.

First, regarding the protester's argument that the Air Force unreasonably assigned it a rating of very good/significant confidence, as opposed to exceptional/high confidence, for IT management, the agency explains that it considered three sources of information in assigning the protester a rating under the subfactor: questionnaires completed by both the contracting officer and quality assurance representative concerning Jantec's performance under the preceding contract for civil engineering services at LAAFB, and a Contractor Performance Assessment Report (CPAR) rating

² While the protester initially objected to the evaluation of CHI's past performance as well, it subsequently withdrew this ground of protest.

³ In its initial protest, the protester also objected to the rating of satisfactory/confidence assigned its proposal for housing management. After reviewing that agency's explanation for the rating in the agency report, the protester withdrew this complaint.

for the same contract. The contracting officer rated the protester's performance as very good under three of five questionnaire items pertaining to IT management, as satisfactory under the fourth, and as exceptional under the fifth, while the quality assurance representative rated the protester's performance as satisfactory under all five questionnaire items.⁴ The CPAR did not include a rating for IT management (the contractor instead being rated under the more general categories of quality of product or service, schedule, cost control, business relations, and management of key personnel); it did include the following narrative under the quality of service/product heading, however:

Contractor has taken on task of installing a new Computer Maintenance Management System (CMMS) well beyond scope of contract. New CMMS is a tremendous benefit to the government dramatically improving ability to review and control maintenance processes. Unscheduled heat and cooling calls have been reduced by a factor of 10.

CPAR, Agency Report, Tab 35. Jantec contends that the CPAR excerpt reflects the exceptional nature of its IT management efforts, and that the comments should have been given greater weight in the Air Force's evaluation than the questionnaires because "[a] questionnaire is completed in a few minutes with no review process and no opportunity for the contractor to respond," while, in contrast, "the CPARS evaluation process is a formalized, disciplined effort including a lengthy explanation for each rating, internal agency review, the contractor's response and a final opportunity for the agency to reconsider the CPARS rating based upon the contractor's response." Protester's Comments, Sept. 15, 2003, at 3.

We think that the rating of very good/significant confidence was justified. The agency explains that the evaluators did not consider the protester's installation of CMMS under the predecessor contract as reflective of exceptional IT management on the part of Jantec since CMMS was not developed by the protester. We see nothing unreasonable in that determination. While, as the protester contends, the Air Force may have benefited from Jantec's initiative and foresight in installing CCMS, this does not mean that the enhanced maintenance management benefits attributable to the new system should be ascribed to Jantec as its installer. We also think that it was reasonable for the Air Force to give significant weight in its

⁴ The questionnaire items pertaining to IT management were whether the contractor had ensured that the data maintained was current and accurate; whether the contractor had managed data for fast and easy retrieval; whether the data collected was valuable and relevant for the purpose intended; whether computer support was provided in a timely and effective manner; and whether the contractor had maximized the use of electronic/paperless methods for processing data and managing project/program communications.

evaluation to the questionnaires completed by the contracting officer and the quality assurance representative, in particular because they, unlike the CPAR, included ratings under the specific category of IT management. In any event, it does not appear that there was any significant inconsistency between the CPAR and the questionnaires since, as noted above, the evaluators did not interpret the CPAR comments as reflective of exceptional IT management efforts by the protester.

Turning then to the protester's argument that it should have received a rating of exceptional/high confidence, as opposed to very good/significant confidence, for real property management, the evaluators considered offerors' past performance in four areas in assigning a rating under this subfactor: commercial facilities maintenance, residential facilities maintenance, grounds maintenance, and predictive preventative maintenance (PPM). The evaluators rated Jantec's performance in maintaining residential facilities and grounds as exceptional/high confidence and its performance in maintaining commercial facilities as very good/significant confidence. In addition, the evaluators rated the protester's performance of PPM as very good/significant confidence.

Jantec argues that it should have received a rating of exceptional/high confidence under the real property management subfactor because its ratings in the residential facilities and grounds maintenance areas were so outstanding as to outweigh the very good/significant confidence ratings that it received in the other two areas. In addition, Jantec argues that it should have received a rating of exceptional/high confidence in the PPM area, and that, if it had, it would have received an overall rating of exceptional/high confidence under the real property management subfactor.

First, we see no basis for the protester's argument that its outstanding ratings in the residential facilities and grounds maintenance areas should have outweighed its very good/significant confidence ratings in the commercial facilities and PPM areas given that the four areas were equally weighted. Second, regarding the protester's complaint that it deserved a higher rating in the PPM area, the evaluators assigned Jantec a rating of very good/significant confidence for PPM because the references furnishing information regarding the protester's performance under the only contract cited by the protester in its proposal as relevant, i.e., the predecessor contract to the one here, indicated that the contractor had not used PPM techniques and rated its maintenance management process as generally very good (one reference) and generally satisfactory (the second reference). The protester disputes the references' representations that it did not use PPM techniques, asserting that "[d]uring the last two years of its current contract performance, Jantec reorganized to establish a Predictive and Preventative Maintenance capability," hiring maintenance engineers who were experienced with PPM. Protest at 5. Regardless of whether the protester's maintenance efforts constituted predictive preventative maintenance, the fact remains that the evaluators rated these maintenance efforts as very good/satisfactory, as opposed to exceptional. In other words, regardless of the

relevance of the efforts, Jantec's performance of them was rated as less than exceptional. Under these circumstances, we see nothing unreasonable in the evaluators having rated Jantec as very good/significant confidence for PPM.

Because we find that the evaluators' ratings of very good/significant confidence for IT management and real property management were reasonable, and the protester has not challenged its rating of satisfactory/confidence for housing management, we do not reach its arguments that it should have been rated very good/significant confidence (as opposed to satisfactory/confidence) under PPD&E and as exceptional/high confidence (as opposed to very good/significant confidence) under program management. We need not consider these arguments because it is apparent from the record that the protester would have received an overall performance confidence rating no better than very good/significant confidence even if it had received the higher ratings under the PPD&E and program management subfactors. In this regard, raising Jantec's ratings under PPD&E and program management to very good/significant and exceptional/high confidence, respectively, would give the protester ratings of very good/significant confidence under three of the five subfactors, a rating of exceptional/high confidence under one, and a rating of satisfactory/confidence under one. Based on this array of ratings, there is no reasonable basis to assume that Jantec's overall rating would be anything but very good/significant confidence. By way of comparison, CHI received an overall confidence rating of very good/ significant based on four subfactor ratings of very good/significant confidence and one of exceptional/high confidence.

Next, Jantec argues that CHI's proposed level of staffing--i.e., [deleted] full time equivalents (FTE) for the base year and [deleted] FTEs for the option years--was inadequate and should have resulted in rejection of its proposal as technically unacceptable. The protester cites as evidence that CHI's proposed staffing level was inadequate the level of staffing proposed in the government estimate ([deleted] FTEs), the level of staffing proposed by the other two technically acceptable offerors ([deleted] and [deleted] FTEs), and the level of staffing that it, the incumbent contractor, proposed ([deleted] FTEs).

The evaluators determined that CHI had proposed an "[e]ffective and efficient organizational structure with adequate overall staffing." Proposal Analysis Report (PAR) at 16. The fact that other offerors proposed (and that the government estimate was based on) lower levels of staffing does not demonstrate that the evaluators' determination was unreasonable, given that, as noted by the contracting officer in the following excerpt, CHI proposed innovations in its approach to the work to reduce the required level of staffing:

CHI's proposal relies heavily on a centralized maintenance model that eliminates redundancies between the two locations where work will be performed. Furthermore, CHI proposed to utilize extensive information technology resources to automate planning and execution

of maintenance. Both of these approaches reduce the staffing required, compared to the approaches adopted by the incumbent contractor and other offerors.

Addendum to Contracting Officer's Statement of Facts at 2.

Jantec further argues that CHI's staffing for contract line item numbers (CLIN) 0002 (Grounds Maintenance), 0003 (Operations and Maintenance--Military Family Housing), and 0009 (Military Family Housing Change of Occupancy Maintenance) was inadequate, as demonstrated by the discrepancy between the number of FTEs proposed by the awardee and the number proposed by the protester itself, *i.e.*, [deleted] versus [deleted] for CLIN 0002, [deleted] versus [deleted] for CLIN 0003, and [deleted] versus [deleted] for CLIN 0009. The PAR indicates that proposed staffing levels were evaluated at the CLIN level as part of the agency's price realism analysis and that CHI's proposal was deemed to be realistic for the work to be performed. PAR at 54. Again, the mere fact that CHI's staffing levels were lower than Jantec's does not demonstrate that the evaluators' judgment was unreasonable.⁵

In an argument related to the above one, Jantec contends that the evaluators failed to conduct an adequate analysis of CHI's proposed price by failing to verify that CHI had proposed a sufficient number of FTEs.

First, regarding the protester's allegation that it is not clear from that record that the Air Force conducted any price realism analysis at all during its conduct of this procurement, the following excerpt from the PAR demonstrates that this was not the case:

Realism: Each offeror's proposal was analyzed to determine realism. Each proposal was deemed to be realistic for the work to be performed, reflected a clear understanding of the requirements, and was consistent between the technical and cost proposals. The realism determination is based on the following analysis.

Full Time Equivalents (FTEs): The proposed numbers of FTEs by CLIN by option period were evaluated to determine if the proposed numbers of FTEs were reasonable for the level of effort required by the SOW for

⁵ We also note that while Jantec proposed significantly higher levels of staffing than CHI for CLINs 0002, 0003, and 0009, it proposed a significantly lower one for CLIN 0001 (Operations and Maintenance excluding Military Family Housing)--*i.e.*, [deleted] versus [deleted]--and presumably, the protester would object to the contention that this discrepancy should be viewed as evidence that its proposed staffing level was inadequate.

each CLIN. Also, the skill mix and types of FTEs per CLIN were evaluated to determine if they were adequate for the effort required in the SOW for that particular CLIN.

Non-Exempt Labor: The proposed direct labor rates were verified to the Service Contract Act or the Davis Bacon Act or local Union Agreements, as applicable. Any discrepancies that were noted during this analysis have been successfully resolved. The proposed non-exempt direct labor rates have been accepted as reasonable.

Professional Labor: This labor was evaluated in accordance with FAR 52.222-46 "Evaluation of Compensation for Professional Employees." Our analysis determined that all professional employees are being properly and fairly compensated.

Other Direct Charges (ODCs): The ODCs were evaluated by determining the type and level of effort that was being subcontracted and to what extent the ODC effort was sufficient, when taken in conjunction with the proposed FTEs, to perform the tasks contained in the SOW.

Indirect Expense Rate: A comparison of the indirect expense rates between offerors was made and all the proposed indirect rates were accepted as reasonable.

Profit: A comparison of the profit rates between offerors was conducted and all the proposed profit rates were determined to be within a reasonable range.

PAR at 54. While the protester characterizes the foregoing analysis as nothing more than "a few conclusory statements, apparently copied from the solicitation," Protester's Comments, Oct. 10, 2003 at 10, we disagree with this assessment; although the details of the analysis pertaining to each particular offeror are not spelled out in the PAR, the steps taken in performing that analysis are, and thus, we do not think that it is accurate to characterize the analysis as consisting of mere conclusions. Moreover, since we see no language in the RFP similar to the language quoted here regarding the analysis of FTEs, we do not see the basis for the protester's argument that this portion of the analysis is "apparently copied" from the RFP.

Second, regarding the protester's argument that CHI's price is not realistic because its staffing is grossly inadequate, as noted above, the evaluators determined that CHI's proposed staffing was adequate, and the protester has failed to demonstrate that this determination was unreasonable.

Jantec also argues that CHI's proposed price was unrealistic because CHI did not increase it in response to a revised wage determination contained in solicitation amendment 0005. In a letter to the Air Force dated May 28, 2003, CHI acknowledged receipt of amendment 0005 and stated that the newly issued wage determination might cause changes in its cost/price, estimated at an additional \$30,000 annually. CHI further stated that it would submit a revised cost/price proposal incorporating any price changes with its final proposal revision (FPR). In its FPR, dated July 11, CHI advised that it had determined not to revise its technical or cost/price proposal further, however. In addition, by letter dated July 14, CHI confirmed that its final price of \$50,718,424 included the costs of the wage determination. The agency maintains that this confirmation "indicates that CHI is aware of and accounted for the increased costs of the wage determination." Addendum to Contracting Officer's Statement of Facts at 4. We agree, and we no basis to reject CHI's price as unrealistic.

Finally, Jantec alleges that CHI improperly conditioned its offer to its competitive advantage by reserving the right to request an equitable adjustment if health care costs increased by a significant amount or if the actual workload under the contract exceeded the workload data listed in the solicitation.

The protester's first allegation is premised on the following language from CHI's proposal:

Labor Related Health Insurance Costs. This is a risk area where no one can predict what is going to happen to future health insurance rates.

Our approach to mitigate this risk is to have employees assume some of the insurance costs as employers are doing nation wide. As we are doing with our current contracts, we continue to look at other insurance options and their cost before we renew each year as another cost mitigating technique. We also, if the increase becomes a significant amount; i.e. 30% to 40%, we would ask the Government to consider this extra cost.

CHI Proposal, Volume IV, at 4. Jantec contends that "[o]ver the course of an eight year contract, such increases in health insurance costs are likely and CHI, by reserving its right to request an equitable adjustment for such cost increases, has unfairly received a competitive advantage." Supplemental Protest, Sept. 2, 2003, at 9.

We do not think that CHI has improperly conditioned its offer by reserving the right to seek an equitable adjustment from the government in the event that its health care costs increase. Reserving the right to ask for an adjustment--a request that the government may decline--is not equivalent to reserving the right to receive an adjustment. Accordingly, unlike the cases cited by Jantec, e.g., Georgetown Univ.,

B-249365.2, Jan. 11, 1993, 93-1 CPD ¶ 87 (where offeror made its labor rates contingent on salary increases determined by its board of directors during contract performance), CHI did not improperly qualify its fixed prices here.

Jantec's second allegation is based on the following excerpt, which appeared in CHI's proposal under the heading "Cost/Price Risk(s)":

Direct Labor Costs. Of course, direct labor costs are in direct proportion to the required staffing level. Have we staffed and priced to a level to accomplish quality SOW work? To assure ourselves that we have, we have approached this contract the same as we do on every contract, we bid; i.e., we had two separate technical teams do independent estimates of the staffing required based on the SOW and work load data in the RFP, using CHI proven performance factors.

* * * * *

Based on the above analysis, we are confident we can perform the SOW giving reasonable interpretation of the government provided work load data. We follow this same process on every bid, and **we have never failed to provide quality services in support of our customers with our proposed staffing.**

CHI Proposal, Volume IV, at 4, 5.

We do not think that the foregoing language reserves to CHI the right to an equitable adjustment in the event that the actual contract workload exceeds the workload data in the RFP; rather, in our view, it seeks to reassure the agency that CHI has based its proposed staffing levels on a reasoned analysis and that its proposal entails minimal risk. The protester asserts that the above language provides CHI with more than a "theoretical competitive advantage," Protester's Comments, Oct. 10, 2003, at 14, citing an alleged plan by CHI to modify the terms of the contract awarded to it in order to secure payment from the government for additional employees. CHI cannot modify the contract without the government's agreement, and there is no evidence in the record here that the agency has agreed or intends to agree to such a modification. Given the absence of such evidence, we regard the protester's allegation as speculative, and thus not for consideration.

The protest is denied.

Anthony H. Gamboa
General Counsel

