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**Comptroller General  
of the United States**

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

## Decision

**Matter of:** AXIS Management Group LLC

**File:** B-408575

**Date:** November 13, 2013

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Venkat Reddy, AXIS Management Group LLC, for the protester.

Sarah T. Zaffina, Esq., Department of the Interior, U.S. Geological Survey, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that agency's price evaluation was unreasonable is sustained where the solicitation gave offerors the discretion to propose a technical approach to satisfy the agency's requirements, and the agency improperly normalized labor hours and labor mix in its price evaluation, which had the effect of ignoring the protester's unique technical approach to satisfying the agency's requirements.
  2. Protest that agency failed to raise significant weaknesses in protested proposal during discussions is denied where the record shows the concerns at issue were not significant weaknesses and need not have been raised.
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### **DECISION**

AXIS Management Group LLC, of McLean, Virginia, protests the award of a contract to Cherokee Nations Technology Solutions, Inc., of Lakewood, Colorado, by the Department of the Interior, U.S. Geological Survey (USGS), under request for proposals (RFP) No. G12PS00932 for laboratory operational support at the agency's National Water Quality Laboratory (NWQL). AXIS argues that the agency failed to conduct a rational price evaluation and failed to conduct meaningful discussions.

We sustain the protest in part, and deny it in part.

## BACKGROUND

The solicitation, issued on April 2, 2013, sought proposals for the provision of operational support to the NWQL.<sup>1</sup> The solicitation contemplated award of an indefinite-delivery/indefinite-quantity contract with task orders to be issued on a fixed-price and labor-hour basis for services to be performed over one base year and up to four option years. RFP at 1-3, 6, 19; Schedule B. Proposals were to be evaluated on a best value basis, with price and four non-price factors considered. Overall technical merit was significantly more important than evaluated price, with price being the determining factor between proposals judged to be essentially equal in technical merit. RFP at 37.

The technical factors, listed in descending order of importance, were: (1) offeror's experience and past performance, (2) technical approach, (3) staffing plan, and (4) transition plan. RFP at 36-37. For the technical approach factor, the RFP stated that the agency was to assess the offeror's understanding of the SOW's requirements and the offeror's approach, including overall staffing, work force performance, medical surveillance, and management reporting. Id. at 36. Under the staffing plan factor, the agency was to assess the offeror's ability and risk associated with obtaining properly credentialed personnel to fulfill the SOW's tasks. Id.

With respect to price proposals, offerors were instructed to submit unit pricing for two fixed-price contract line item numbers (CLIN) consisting of front desk support and information technology support. RFP at 1-3; Schedule B. Offerors were also instructed to propose labor categories, number of hours and hourly rates for three CLINS: (1) laboratory support, (2) support services support, and (3) quality assurance. Id. For each of these CLINs, offerors were required to list proposed labor categories, number of hours, and rates on the pricing sheet included with the RFP at Schedule B. Id. Offerors were instructed that all task descriptions identified in the SOW must be priced. RFP at 57. The RFP cautioned offerors that "if a labor category is not available, these exceptions may be detrimental to the evaluation of the offeror's proposal." Id. Finally, the RFP instructed offerors that the government was to evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. RFP at 37.

The SOW included historical staffing levels for 26 separate labor categories from fiscal year (FY) 2006 through FY 2012.<sup>2</sup> RFP, SOW, at 1-2. The historical data

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<sup>1</sup> The RFP contemplated various work requirements consisting of technical, analytical, quality assurance, administrative, information technology, warehouse and general support services for the NWQL. RFP, Statement of Work (SOW), at 4.

<sup>2</sup> Offerors were cautioned that the quantities in the schedule were estimated quantities for evaluation purposes only, RFP at 6, and were instructed to respond

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showed staffing for only 12 of the 26 identified labor categories; the data was listed as fractions of full-time equivalent (FTE) staffing. The historical labor hours for each FTE were not listed in the solicitation. Id. The SOW also set forth training, quality assurance, safety management, work days/hours requirements as well as various task descriptions. The task descriptions corresponded to the CLINs set forth in the schedule of supply/services as well as the Schedule B pricing sheet. Each task description set forth performance-based tasks, contractor qualification, training, and quality assurance requirements. RFP, SOW, at 13-29. Finally, while the SOW set forth historical staffing levels, it did not include staffing estimates or annual labor hour requirements.

Three proposals were received by the proposal due date. The agency conducted a technical evaluation of the proposals, assigned numerical scores for each non-price evaluation factor, and made substantive comments.<sup>3</sup> AR, Exh. 7, Technical Evaluation Score Sheets. Cherokee received a higher technical point score than AXIS, and both proposals received significantly higher point scores than the third proposal. The agency established a competitive range comprised of Cherokee and AXIS.

With respect to the initial technical evaluation of AXIS, the competitive range determination found no deficiencies and various strengths, but noted the following weaknesses:

Weaknesses – Staffing and transition plan risky and unrealistic with USGS security requirements and no contingency for possible delays if current employees don't accept offer to work, and labor mix of a concern in regards to laboratory technician positions, 1880 hours per year is 40 hours below the standard and is a concern for maintaining current work requirements.

AR, Exh. 8, Competitive Range Determination, at 2-3. The competitive range determination also synopsised AXIS' technical evaluation, listing concerns with AXIS' technical approach due to security requirements of the agency, with AXIS' staffing plan because it used a staffing pool, and with AXIS' use of 1880 hours per year (instead of 1920) as a basis for its labor hours CLINs. Id. at 3-4.

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based on the work listed in the SOW. Agency Report (AR), Exh. 5, Question and Answer.

<sup>3</sup> The individual evaluator sheets were not provided to AXIS as there was no protective order issued in this protest. Because a protective order was not issued here, our discussion is necessarily general. Our Office was provided a complete copy of the AR for our in-camera review.

The agency conducted oral discussions with AXIS via a teleconference. A written synopsis of this session shows that six discussion topics were addressed, including concerns about AXIS' labor mix as it relates to laboratory technicians and quality assurance, concern about its downward pricing, and concern about its use of 1880 instead of 1920 hours as a basis for its labor hour CLINs.<sup>4</sup> AR, Exh. 9, Agency's Discussion Notes. The synopsis shows that AXIS responded to each question. The synopsis also states that AXIS "asked if they had answered all my questions to my satisfaction and I replied yes. Then he asked if they should submit a revised proposal and I responded that the decision to submit a revised proposal or not was up to them." Id. AXIS did not submit a revised proposal.

After conducting discussions, the agency made a source selection decision, awarding the contract to Cherokee based on its higher technical rating<sup>5</sup> and lower evaluated price of \$4,813,859.16 versus AXIS' evaluated price of \$4,914,872.10.<sup>6</sup> AR, Exh. 10, Source Selection Decision. AXIS was informed of the agency's award decision via letter dated June 28. The firm timely requested a debriefing, which was conducted via teleconference on July 9. In the debriefing, AXIS was informed of a weakness related to its reliance on a staffing pool and that its transition plan presented risk. This protest followed.

## DISCUSSION

AXIS' primary arguments are two-fold. First, AXIS argues that the agency conducted an improper price evaluation. Specifically, AXIS contends that the agency improperly adjusted its evaluated price to conform to an internal agency objective for level of effort and labor mix, despite the technical evaluation finding that protester's proposed solution "was appropriate, contained strengths, and warranted an acceptable rating." Comments at 9. Second, AXIS argues that the

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<sup>4</sup> The agency indicated its understanding that, historically, 1920 hours was used by NWQL to successfully complete its work and the number was in accordance with Department of Labor standards. AR, Exh. 9, Agency's Discussion Notes, at 2.

<sup>5</sup> During the course of the protest, the agency informed this Office that the original technical evaluation scores had been miscalculated. The agency provided a document showing the revised technical score calculation, which showed Cherokee had the higher technical score, although by a lesser margin than previously calculated.

<sup>6</sup> As discussed in more detail below, AXIS' proposed price was \$3,824,972.80, which was upwardly adjusted by the agency to \$4,914,872.10. Cherokee's proposed price was \$6,820,556.60 before final proposal revision and adjustment downward by the agency to \$4,813,859.16. AR, Exh. 8, Competitive Range Determination, at 4.

agency did not conduct meaningful discussions as it failed to raise various significant weaknesses in AXIS' proposal, including agency concerns regarding AXIS' staffing and transition plans and concerns about AXIS' labor mix, which resulted in substantial adjustments by the agency to protester's evaluated price. Protest at 4-7; Comments at 1-4. For the reasons discussed below, we sustain the protest with respect to the price evaluation and deny the protest with respect to the adequacy of discussions.

### Price Evaluation

We review an agency's proposal evaluation for reasonableness and to ensure it is consistent with the terms of the solicitation, applicable statutes and regulations. Advanced Systems Technology and Management, Inc., B-291529, Dec. 20, 2002, 2002 CPD ¶ 219 at 4. The depth of an agency's price analysis is within the agency's discretion and we will review its analysis for reasonableness. Id. An agency may use various price analysis techniques and procedures to ensure a fair and reasonable price. Resource Consultants, Inc., B-290163, B-290163.2, June 7, 2002, 2002 CPD ¶ 94 at 3 n.1.

The record shows that AXIS proposed a price of \$3,824,972.80 for the base year and four option years, covering the two fixed-price CLINs and three labor hour CLINs. AR, Exh. 8, Competitive Range Determination, at 4. AXIS derived its labor hour CLIN prices based on an 1880 hour per year FTE, its proposed labor rates, and its proposed labor mix based on its understanding of the SOW. AR, Exh. 6, AXIS' Proposal. In conducting its price evaluation, the agency adjusted AXIS' proposed labor hours from 1880 to 1920 in order to "match the historical data and the current requirement of the NWQL." AR, Exh. 10, Source Selection Decision, at 5. It also adjusted both offerors' labor category mixes for the same stated reason. Id. While the agency did not adjust proposed labor rates, its adjustment to AXIS' labor hours, and to both offerors' labor mixes, resulted in adjustments to both offerors' evaluated prices. According to the agency, since the focus of the labor hour CLINs was on the hourly labor rates, the number of hours and labor mix to calculate the estimated full cost should be consistent for both offerors. The agency's evaluation resulted in an upward adjustment in AXIS' price from its proposed price of \$3,824,972.80 to \$4,914,812.10. Id. at 10.

In effect, the agency normalized each offerors' labor hours and labor mix to conform to an internal government estimate of its current need. Normalization involves the adjustment of offers to the same standard or baseline where there is no logical basis for a difference in approach or where there is insufficient information provided with the proposals. Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 9. Normalization is not proper, however, where varying costs between competing proposals result from different technical approaches that are permitted by the RFP. Id.

As detailed above, the RFP here required offerors to submit proposed labor hours, labor rates, and a labor mix based on their assessments of task descriptions set forth in the SOW. Moreover, the RFP informed offerors that the government would assess each offeror's understanding of the requirements and approach, including overall staffing, as a function of its technical evaluation. In other words, the RFP permitted offerors to submit their own technical approach and the agency obligated itself to evaluate that approach. Consequently, it was unreasonable for the agency to substitute the labor hours and labor mix proposed by AXIS with its own internal estimates as such substitution ignores the potential for differing labor hours and labor mix based on differing technical approaches. See General Atomics, B-287348, B-287348.2, June 11, 2001, 2001 CPD ¶ 169 at 7.

The agency asserts that neither the awardee nor AXIS submitted proposals that demonstrated compliance with the solicitation requirements. As a result, the agency states that it provided each offeror an opportunity to address issues with their respective proposals during discussions. AR, Agency Supplemental Response, at 6. According to the agency, AXIS was placed on notice of the agency's concerns with its labor mix and proposed use of 1880 hours, and on notice about how the agency would conduct its price evaluation.<sup>7</sup> Id. Based on the record before us, we disagree.

First, a review of AXIS' proposal as it relates to labor hours, labor rates and labor mix does not support the agency's position that the firm failed to demonstrate compliance with the solicitation requirements. To the contrary, AXIS proposed hours, rates and mix that it believed were appropriate based on its own assessment of the SOW, as it was instructed to do by the RFP. The fact that AXIS' proposal did not comport with the agency's internal estimates does not render its proposal non-compliant with the solicitation requirements.

Second, our review of the record shows that, while the agency may have placed AXIS on notice that it intended to adjust its labor hours from 1880 to 1920 per FTE as part of its price evaluation, the record does not support the agency's position that it put the firm on notice that it intended to alter its labor mix as well.<sup>8</sup> The record

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<sup>7</sup> To the extent that the agency's position is that AXIS' protest of the agency's price evaluation methodology is untimely, as noted below, we disagree.

<sup>8</sup> The agency asserts that it raised the question of AXIS' proposed labor hours during discussions. AR, Agency Supplemental Response, at 10. The agency then states that it deemed AXIS' explanation regarding its use of reduced labor hours as "satisfactory," and informed AXIS of this fact. Id.; AR, Exh. 9, Agency's Discussion Notes. The agency states that it then informed AXIS that, notwithstanding satisfactory explanation, it intended to conduct an "apples to apples" comparison of pricing based on level of effort to ensure fair evaluation. This comparison appears from the record to focus on labor hours, not labor mix. Id.

shows that the adjustment to AXIS' labor mix significantly increased its evaluated price. AR, Exh. 13, Price Evaluation. Since the solicitation did not inform offerors of the agency's price evaluation methodology, and since we find that AXIS was not placed on notice through discussions, we can only conclude that the firm's challenge to the price evaluation is timely.

In conclusion, where, as here, an RFP permits offerors to propose a technical approach and informs them that it intends to evaluate that approach, including proposed labor hours, labor rates and labor mix, its subsequent price evaluation cannot ignore proposed labor hours and labor mix, as such an evaluation ignores the potential for differing hours and labor mix based on differing technical approaches.<sup>9</sup> See General Atomics, supra, at 7. Therefore, for this reason we sustain the protest.

We are also not persuaded by the agency's argument that AXIS was not prejudiced since it applied the same price evaluation methodology to both proposals. AXIS was the lower-priced offeror considering proposed prices. The agency improperly raised AXIS' proposed price when it adjusted its labor hours and labor mix, making AXIS the higher-priced offeror. Although Cherokee's proposal was rated higher than AXIS' proposal, we cannot say whether the agency's award decision would have changed had it not adjusted AXIS' labor hours and labor mix. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc. – Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that AXIS has established the requisite competitive prejudice for our Office to sustain the protest.

#### Lack of Meaningful Discussions

AXIS next alleges that the agency did not conduct meaningful discussions as it failed to raise various significant weaknesses in its proposal, including agency concerns regarding AXIS' staffing and transition plans, and concerns about its labor mix. Protest at 4-7; Comments at 1-4. We deny this protest ground.

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<sup>9</sup> This does not mean that the agency could not use its internal estimates in evaluating proposals. An agency may evaluate technical or price proposals against an undisclosed, reasonable estimate of the appropriate staffing needed to perform the solicitation requirements provided the RFP notifies offerors that staffing is an area of evaluation. IP Network Solutions, Inc.; Emagine IT, Inc.; EnterpriseTech Joint Venture, LLC, B-408232 et al., July 25, 2013, 2013 CPD ¶ 187 at 4. This decision, however, does not stand for the proposition that agencies can adjust proposed prices under these facts, as the agency asserts. Instead, agencies may reasonably compare technical and price proposals against internal estimates for evaluation purposes, such as for proposal risk, reasonableness and realism.

When an agency engages in discussions with an offeror, the discussions must be meaningful. In order to be meaningful, discussions must be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving award. Powersolv, Inc., B-402534, B-402534.2, June 1, 2010, 2010 CPD ¶ 206 at 7. An agency may not, through its questions or silence, lead an offeror into responding in a manner that fails to address the agency's actual concerns; may not misinform the offeror concerning a problem with its proposal; and may not misinform the offeror about the government's requirements. Id. While the precise content of discussions is largely a matter of the contracting officer's judgment, such discussions must, at a minimum, address deficiencies and significant weaknesses identified in the proposal. Federal Acquisition Regulation (FAR) § 15.306 (d)(3); American States Utilities Services, Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5.

The agency argues that AXIS did not have deficiencies or significant weaknesses in its proposal. AR, Memorandum of Law, at 5. In support of this contention, the agency asserts that none of the individual evaluations indicated a significant weakness and AXIS was scored highly for each factor. Id. On the issue of AXIS' price proposal, the agency states that it did not have any concerns with AXIS' price proposal and consequently did not have a duty to discuss any price issues with the firm. AR, Supp. Agency Response, at 3-4.

A significant weakness in a proposal is a flaw that appreciably increases the risk of unsuccessful contract performance. FAR § 15.001. In determining whether a concern is a significant weakness, our Office does not look solely to the label or term used by the agency, but additionally looks to the context of the evaluation. Raytheon Company, B-404998, July 25, 2011, 2011 CPD ¶ 232 at 4; Planning and Development Collaborative International, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28. The fact that the agency does not expressly characterize the concern as a significant weakness is not controlling. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 8.

Here, the agency did not label its concerns about AXIS' staffing or transition plans as significant weaknesses. In fact, the individual evaluation worksheets did not categorize any aspect of AXIS' proposal as strengths or weaknesses. Nor did the competitive range determination categorize any concerns about AXIS' proposal as significant weaknesses; the determination only categorized evaluation comments as "strengths" or "weaknesses." AR, Exh. 8, Competitive Range Determination.

Also, the record shows that the agency gave AXIS very high point scores for both the staffing plan and transition plan factors, AR, Exh. 7, Technical Evaluation Score Sheets, despite finding the "[s]taffing and transition plan risky and unrealistic with USGS security requirements and no contingency for possible delays if current employees don't accept offer to work." AR, Exh. 8, Competitive Range

Determination at 2. Moreover, when the technical evaluation team chair met with the contract specialist--subsequent to the technical evaluation and prior to discussions--it appears that concerns about AXIS' transition and staffing plans were not discussed as they were not "USGS' greatest concern." AR, Memorandum of Law at 5; AR, Exh. 16, Contract File Notes. Finally, these concerns do not appear in the source selection decision, which discusses staffing pools in general and recognizes AXIS' good recruitment skills. AR, Exh. 10, Source Selection Decision at 7.

We conclude, on this record, that the agency was not required to raise its concerns about AXIS' staffing and transition plans during discussions because the agency neither identified these concerns as significant weaknesses nor treated them as such. Any such concerns appear to have been addressed and allayed prior to engaging in discussions, and prior to the award decision.

We also deny AXIS' protest ground alleging lack of meaningful discussions with respect to its labor mix. As noted above, the record shows that the agency did raise the identified concerns it had about AXIS' labor mix. AXIS was also afforded the opportunity to provide oral responses to the discussion questions on these topics, which the agency indicated were satisfactory.<sup>10</sup> Consequently, we believe that discussions were meaningful as to the agency's identified concerns about AXIS' labor mix.

## RECOMMENDATION

We recommend that the agency reevaluate the price proposals consistent with the terms of the solicitation and conduct a new price/technical tradeoff analysis. If Cherokee's proposal is not found to reflect the best value to the government, the agency should terminate its contract and make award to the offeror whose proposal is determined to be the best value to the government.<sup>11</sup> We also recommend that

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<sup>10</sup> Again, AXIS was not on notice that the concerns about its proposal would translate into adjusting its labor hours and labor mix during the price evaluation. It also appears that the technical evaluators believed the firm's labor mix was appropriate to satisfy the SOW's requirements. If the technical evaluators were concerned about AXIS' labor mix, they could have adjusted their technical scores and comments commensurately.

<sup>11</sup> The record shows that AXIS' labor mix differed from the agency's internal estimate in areas other than those identified during discussions. There is no evidence in the record that the agency treated these differences as weaknesses, perhaps because the labor mix was normalized in the price evaluation. Upon re-evaluation, if the agency views AXIS' labor mix as a significant weakness, it should address that matter through discussions.

the agency reimburse the protester for the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2013). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling  
General Counsel