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

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## Decision

**Matter of:** ERIMAX, Inc.

**File:** B-410682

**Date:** January 22, 2015

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Jerry A. Miles, Esq., Jennifer Banks, Esq., and Angeline Burke, Esq., Deale Services, LLC, for the protester.

Rebecca E. Pearson, Esq., Robert A. Burton, Esq., and Elizabeth Ann Buehler, Esq., Venable LLP, for Veterans Management Services, Inc., an intervenor.

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### DIGEST

1. Protest alleging that awardee's quotation contained a material misrepresentation regarding authorization to use a proposed subcontractor's name is denied where the protester has not demonstrated that the awardee's representation was false.
2. Protest challenging the agency's price evaluation is denied where the solicitation did not provide for a price realism analysis and where the record demonstrates that the agency did not conduct such an assessment.

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### DECISION

ERIMAX, Inc., of Largo, Maryland, protests the establishment of a blanket purchase agreement (BPA) with Veterans Management Services, Inc. (VMSI), of Sterling, Virginia, under request for quotations (RFQ) No. ST-1330-14-RQ-0541, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for acquisition and grant management support services. The protester alleges that the awardee made a material misrepresentation regarding its authorization to use a subcontractor's name in its quotation. ERIMAX also challenges the agency's evaluation of the quotations and award decision.

We deny the protest.

## BACKGROUND

The RFQ was issued on June 26, 2014, under Federal Acquisition Regulation (FAR) subpart 8.4 procedures, to interested small business vendors holding Federal Supply Schedule contracts under Schedule No. 874, mission oriented business integrated services (MOBIS). RFQ at 8; Contracting Officer (CO) Statement at 1. The RFQ anticipated the issuance of a single BPA for a base year and four 1-year options for acquisition and grants management support services to support NOAA's acquisition and financial assistance activities.<sup>1</sup> RFQ at 9, 12. Vendors were informed that the BPA would be issued on a best-value basis, considering four evaluation factors (listed in descending order of importance): technical approach; management plan; past performance; and price.

With respect to the price factor, the solicitation required vendors to complete a pricing matrix for a variety of labor categories at various NOAA locations. RFP at 96. Specifically, the solicitation required vendors to enter fully-burdened fixed hourly labor rates for each labor category into a spreadsheet provided by the agency. RFP attach. A, Pricing Matrix. Once vendors' prices were entered, the spreadsheet would automatically calculate total prices using the rates provided by the vendors. Legal Memorandum at 14. The solicitation stated that the agency would evaluate whether the proposed prices were fair and reasonable. RFQ at 96.

NOAA received 10 quotations in response to the RFQ by the July 17 closing time, including quotations from ERIMAX and VMSI. AR, Tab 20, Source Selection Evaluation Board (SSEB) Final Report, at 75. As relevant to this protest, ERIMAX's quotation provided that the firm would perform the contract using "Team ERIMAX," which consisted of ERIMAX and its subcontractor, ASI Government, Inc. (ASI). AR, Tab 9, ERIMAX Technical Quotation, at A-1. VMSI's quotation also provided a list of its "proposed team members," which included three subcontractors, one of which also was ASI.<sup>2</sup> AR, Tab 11, VMSI Technical Quotation, at A-3.

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<sup>1</sup> The solicitation provided that "calls" or task orders pursuant to the BPA would subsequently be issued on either a fixed-price, labor-hour, and/or time and materials basis. RFQ at 8. The estimated ceiling price for all task orders issued under this BPA was \$49,999,000. *Id.* at 9.

<sup>2</sup> The record shows that ASI had two individuals employed under the incumbent contract. AR, Tab 27, Post Award Correspondence between VMSI and NOAA. The protester states that the agency believed ASI to be "the preeminent provider in the acquisition support industry." Protest at 9-10, citing Protest, Affidavit of ERIMAX Employee RR, at 4.

The agency's source selection evaluation board (SSEB) evaluated ERIMAX's and VMSI's quotations as follows:<sup>3</sup>

	<b>ERIMAX</b>	<b>VMSI</b>
Technical Approach	Outstanding	Outstanding
Management Plan	Outstanding	Outstanding
Past Performance	Significant Confidence	Significant Confidence
Price	\$145,845,652	\$140,301,185

AR, Tab 20, SSEB Final Report, at 3. With regard to the vendors' technical approach evaluation factor, the SSEB found that ERIMAX had 4 significant strengths (19 strengths in total) and 2 weaknesses, while VMSI had 5 significant strengths (13 strengths in total) and 2 weaknesses. Id. at 4, 52.

Following the evaluation of quotations, the agency made a competitive range determination, which included the quotations of ERIMAX and VMSI. AR, Tab 17, Competitive Range Determination, at 5. The firms then provided oral presentations to the government. ERIMAX's oral presentation was given by representatives from both ERIMAX and ASI. AR, Tab 19, ERIMAX Oral Presentation. VMSI's oral presentation was given by representatives of VMSI and its two other subcontractors, but not ASI. Id., VMSI Oral Presentation.

The SSEB conducted a detailed assessment of the vendors' quotations, which included the oral presentations, and performed a comparative evaluation under each of the evaluation factors. AR, Tab 20, SSEB Final Report, at 4-77. The agency also prepared a price analysis memorandum, which compared the total prices provided by each vendor. AR, Tab 18, Price Analysis Memorandum.

In making the selection decision, the source selection official (SSO) considered the SSEB final report, the SSEB briefing, the vendors' oral presentations, and the price analysis memorandum. AR, Tab 22, Source Selection Decision, at 3, 5-6. Based upon this information, the SSO recognized that both ERIMAX and VMSI received "outstanding" ratings, but the SSO concluded that ERIMAX's quotation presented a "slightly stronger" technical approach, while VMSI's quotation presented a stronger management plan and past performance. Id. at 3-4. The SSO also noted weaknesses in ERIMAX's program manager's oral presentation, which "decreased the Government's confidence in the Offeror's ability to perform under this BPA." Id. at 5-6. Based on his comparative analysis, the SSO selected VMSI's quotation as the best value to the agency. Id. at 6. On September 23, the agency made award to VMSI; ERIMAX subsequently requested a debriefing.

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<sup>3</sup> Quotations were rated under the technical approach and management plan evaluation factors as outstanding, excellent, acceptable, marginal, or unacceptable.

ERIMAX's debriefing took place on October 2, and was attended by representatives of both ERIMAX and ASI. AR, Tab 24, NOAA Letter to ERIMAX, Oct. 6, 2014. During the debriefing, the agency informed ERIMAX that VMSI's quotation had included ASI as a potential subcontractor. Id. In response, ERIMAX explained that it had an exclusive teaming agreement with ASI; that ASI could not have been part of VMSI's team; and that VMSI had proposed ASI as a subcontractor without ASI's knowledge or consent. Protest at 6; AR, Tab 24, NOAA Letter to ERIMAX, Oct. 6, 2014. The contracting officer informed ERIMAX that the debriefing would remain open while the agency reviewed and investigated ERIMAX's allegations, as well as its award determination. CO Statement at 9.

By letter dated October 6, the agency informed ERIMAX of the results of its investigation. AR, Tab 24, NOAA Letter to ERIMAX, Oct. 6, 2014, at 1-2. Specifically, the agency's letter first noted that the agency believed--based upon the terms of the exclusive teaming agreement--that the agreement was only binding on the parties for pre-award activities as they related to this procurement.<sup>4</sup> Id. at 1. The agency also noted, after a review of VMSI's quotation, the following: it is apparent that ASI was depicted in VMSI's quotation as a "proposed subcontractor;" the corporate capabilities and experiences were clearly presented from VMSI as the prime; VMSI's quotation did not indicate that ASI had had a role in preparing the quotation or would perform any specific roles once the BPA was awarded; and VMSI's quotation did not contain any representations that ASI was "an active team member." Id. at 2. The agency additionally explained that VMSI was not evaluated more favorably due to its proposed subcontractors. Id. at 1-2. In sum, the agency indicated that the exclusive teaming agreement was "an external matter" between ERIMAX and ASI which did not involve the government. Id. at 2. The letter finished by stating that the debriefing was closed. Id. at 2.

On October 14, ERIMAX filed the current protest.

## DISCUSSION

ERIMAX presents several challenges to the agency's evaluation and award decision.<sup>5</sup> The protester primarily contends that VMSI's quotation contained a

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<sup>4</sup> Specifically, the teaming agreement stated that it would terminate upon award to a vendor other than ERIMAX. Protest, exh. E, Teaming Agreement, at 4.

<sup>5</sup> We have considered each of the various arguments presented by the protester and find no basis to sustain the protest. For example, the protester asserts that it was unreasonable for the agency to assign seven strengths to VMSI's quotation under the technical evaluation factor for what is, according to VMSI, essentially only one strength--VMSI's ability to retain incumbents. Here, ERIMAX's disagreement with

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material misrepresentation. The protester also contends that the agency failed to conduct a proper price evaluation. For the reasons discussed below, we find no basis to sustain the protest.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

#### Material Misrepresentation

ERIMAX maintains that VMSI's quotation improperly included ASI as a subcontractor for this BPA. Specifically, ERIMAX asserts that VMSI did not have permission from ASI to use its name (or the names of any of its employees) in ERIMAX's quotation.

ERIMAX supports this contention in two ways. First, it provides sworn affidavits from ERIMAX employees regarding conversations they had with an ASI employee. In this regard, ERIMAX provides two affidavits that describe two separate conversations held between ERIMAX employees and an employee of ASI. In both affidavits, the ERIMAX employees state that the ASI employee informed them that he had participated in a telephone conversation wherein VMSI was informed that "ASI was on another team exclusively, and that VMSI could not use ASI or its information in their proposal." Protest, Affidavit of ERIMAX Employee RR, at 4-5; Protest, Affidavit of ERIMAX Employee WM, at 4.

Second, ERIMAX's protest includes a letter from ASI to ERIMAX, dated October 6, 2014, which provides in relevant part:

ASI teamed exclusively with ERIMAX for the NOAA AGO Support Contract proposal and did not have any agreement--written, verbal, or otherwise--in which ASI Government permitted any other company to

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the agency's reasonable evaluation does not provide a basis to sustain the protest. In this regard, the record establishes that the agency did not simply repeat one strength seven times, but rather viewed the protester's ability to retain incumbent staff as positively affecting various aspects of VMSI's technical quotation. AR, Tab 15, Technical Evaluation Consensus Worksheet, at 2-3. Moreover, the record shows the source selection official was aware that many of VMSI's strengths involved capturing the incumbent workforce, and considered this as part of his decision. We find the agency's evaluation here unobjectionable.

use ASI's name, or any of ASI's people's names, in any other company's proposal for this opportunity.

Protest, exh. F, ASI Letter to ERIMAX. This letter was signed for the President/CEO of ASI by ASI's Director of Contracts. The Director of Contracts was also the individual who signed the exclusive teaming agreement with ERIMAX. AR, Tab 28, ERIMAX Teaming Agreement, at 8.

In response to the protester's allegations, VMSI contends that it had been in negotiations with ASI prior to quotation submission for an exclusive teaming agreement and, when the negotiations fell through, it was granted oral permission from the president of ASI to use ASI's name in the firm's quotation--so long as VMSI did not make any statement regarding any exclusivity between VMSI and ASI. Intervenor's Comments, Nov. 24, 2014, at 5. To support its assertions, VMSI provides four declarations from VMSI personnel.<sup>6</sup> The first declaration, from the chief executive officer (CEO) of VMSI, provides that he participated in a telephone call on July 9, 2014, in which the president of ASI informed him that ASI would not be teaming with VMSI for this procurement, and that ASI was teaming with another company. Id. attach. 1, Declaration of VMSI CEO, at 3. During the phone call, the CEO of VMSI asked the president of ASI "if ASI was agreeable to VMSI keeping the references to ASI in its proposal so long as VMSI did not make any statements regarding any exclusivity between VMSI and ASI or any established pre-award teaming agreement." Id. The president of ASI replied that "Yes--that is ok." Id. VMSI's remaining declarations support the CEO's declaration, with two declarations from individuals who were in the room during the phone call, and from an individual who spoke with the CEO of VMSI after the phone call. Id. attach. 2, 3, 4.

A vendor's material misrepresentation in its quotation can provide a basis for disqualification of the quotation and cancellation of a contract award based upon the quotation. Superlative Technologies, Inc., B-408941, Dec. 30, 2013, 2014 CPD ¶ 18 at 5. A misrepresentation is material where the agency relied upon it and it likely had a significant impact on the evaluation. Id. For a protester to prevail on a claim of material misrepresentation, the record must show that the information at issue is false. Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 9; Commercial Design Group, Inc., B-400923.4, Aug. 6, 2009, 2009 CPD ¶ 157 at 6.

Based upon the record before us, we find that the protester has not provided sufficient evidence to demonstrate that the awardee made a material

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<sup>6</sup> The statements submitted by VMSI are unsworn declarations made under the penalty of perjury, which have the same force and effect as sworn declarations or affidavits. See 28 U.S.C § 1746 (2006); ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 4 n.7.

misrepresentation in its proposal with regard to the use of a proposed subcontractor's name. While the protester contends that the awardee did not have permission to use ASI's name as a proposed subcontractor, we do not find the protester's arguments and affidavits to be persuasive. In this regard, while the protester states that VMSI did not have permission to use ASI's name, VMSI has presented declarations indicating that it specifically had such permission. In an attempt to rebut VMSI's declarations, ERIMAX provides affidavits not from ASI employees, but rather, from ERIMAX employees that state only what ASI employees said. We similarly do not find the letter from ASI to ERIMAX, which contends that it did not give permission for VMSI to use its name, to be persuasive evidence of a misrepresentation where VMSI has provide declarations to the contrary. In this regard, the letter was submitted directly to ERIMAX, served ASI's own interests, and was not under penalty of perjury. We also note that the record contains several emails between VMSI and ASI immediately following award that indicate the two firms were negotiating in an effort to reach a post-award subcontracting arrangement. See Intervenor's Comments, Nov. 24, 2014, exhs. 8-13. On this record, we do not believe ERIMAX has shown the representations of VMSI to be false.

#### Price Evaluation

ERIMAX asserts that the agency conducted an unreasonable price realism evaluation and that VMSI's quotation should have been rejected for unrealistically low labor rates.

As a general rule--that applies to issuing BPAs as well as awarding contracts-- when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are reasonable. FAR § 8.405-3(b)(2)(vi) (for services requiring a statement of work, when establishing a BPA, the agency is responsible for determining that the proposed price is reasonable). An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et. al Aug. 15, 2014, 2014 CPD ¶ 241 at 16. Where there is no evaluation factor providing for consideration of price realism, a determination that an offeror's price is too low generally concerns the offeror's responsibility. See PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 6. While an agency may 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 risk, offerors must be advised that the agency will conduct such an analysis. See Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

Our Office has held that, in the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where it expressly states that the agency will review prices to determine whether they reflect

a lack of technical understanding, and where the solicitation states that a vendor/offeror's submission may be rejected on the basis of low prices. DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required, nor permitted, to conduct one in awarding a fixed-price contract. Emergint Techs., Inc., supra.

Here, the solicitation did not contemplate a price realism evaluation. Specifically, the solicitation did not contain an express provision for price realism analysis, nor did it advise vendors that their quotations could be rejected on the basis of low prices; accordingly, a price realism analysis was neither required nor permitted.

ERIMAX nevertheless asserts that the agency's price evaluation was fundamentally flawed with regard to price realism.<sup>7</sup> ERIMAX points out that the agency's evaluation documents contain several instances where the agency references a price realism analysis. For example, the protester notes that the agency's price analysis memorandum states that the agency performed a price realism analysis on one of the labor categories; the memorandum also states that its purpose "is to record the price analysis . . . for the purposes of determining . . . realism" (among other things); and the source selection decision document states that a price realism analysis was performed. AR, Tab 18, Price Analysis Memorandum, at 1. The protester maintains that, given these representations in the record, the agency either failed to conduct a proper price realism analysis, or the SSO's decision was flawed because the SSO mistakenly believed that such an analysis had occurred.

The agency responds that the evaluator's use of the phrase "price realism" was mistaken, and the record demonstrates that the agency did not, in fact, conduct any such analysis. Id. at 1-3. In this regard, the record shows that the "price realism" analysis the agency performed on one of the labor categories was merely to determine the impact of adding that rate (which had been left out of the automatically-generated spreadsheet total) to the overall price, and not an analysis to determine that the labor rate was too low. Id. at 1-2. With regard to the other

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<sup>7</sup> In its initial protest, ERIMAX alleged that the agency's price evaluation was flawed because it failed to properly evaluate the labor rates for one of the required labor categories (program management support specialist). The agency's report explained that NOAA was aware that its pricing matrix spreadsheet failed to add in that position's labor rates to the total price and took steps at the time to evaluate prices in light of the error in the spreadsheet. NOAA asserted that the agency nevertheless calculated prices properly. Agency Legal Memorandum, at 14-15. ERIMAX did not further discuss these contentions in its comments responding to the agency report, and we therefore deem these issues abandoned. See International Mgmt. & Commc'ns Corp., B-272456, Oct. 23, 1996, 96-2 CPD ¶ 156 at 2-3 n.2.



references to “price realism,” the agency explains (in an affidavit from SSO) that the word was used improperly, and the agency in fact, only performed a price reasonableness analysis. Agency Supp. Legal Memorandum, Declaration of Source Selection Official, at 13. Given the agency’s explanation, and a record that demonstrates that no price realism analysis was completed, we find nothing improper with the agency’s evaluation.

#### Best Value Decision

Finally, ERIMAX challenges the agency’s best-value determination on the basis of the agency’s improper evaluations.

As discussed above, we find no merit to the protester’s objections to the agency’s evaluations. Thus, there is no basis to question the agency’s reliance upon those evaluation judgments in making its source selection, and the protester’s disagreement in that regard does not establish that the agency acted unreasonably or provide a basis to sustain its protest. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

Susan A. Poling  
General Counsel