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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: Contract Management, Inc.

File: B-292760

Date: November 20, 2003

Timothy H. Power, Esq., for the protester.

Jan E. Takamine, Esq., and Damon Martin, Esq., Naval Facilities Engineering Command, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that elimination of protester's proposal from competitive range was improper because agency's price analysis was based on flawed government estimate is without merit, where elimination from competitive range was based on comparison of protester's price to other offerors' prices, not to estimate.

DECISION

Contract Management, Inc. (CMI) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N62742-03-R-2219, issued by the Department of the Navy for secure facilities custodial services in Oahu, Hawaii. CMI asserts that the agency failed to perform an adequate price analysis before eliminating its proposal from further consideration.¹

We deny the protest.

The RFP called for proposals to perform custodial work at several secure facilities for a base year, with four 1-year options, on a fixed-price basis. Offerors were advised that the agency would make award on a "best value" basis, with price and

¹ In its initial protest, CMI asserted that there were improprieties in the agency's technical evaluation as well. In its comments responding to the agency report, CMI conceded that the agency's technical evaluation was unobjectionable. Protester's Comments, Oct. 15, 2003, at 6. We therefore do not consider this aspect of its protest further.

technical considerations being equally weighted. Within the technical area there were two factors, past performance/experience and technical approach, that also were equally weighted.

The agency received 14 proposals and, after evaluating the submissions, established a competitive range of 8 firms, including CMI. The agency then engaged in discussions, obtained revised proposals, and established a second competitive range of two firms, eliminating CMI from further consideration. The record shows that the proposal of one of the competitive range offerors (NMS) was assigned adjectival ratings identical to the ratings assigned to CMI's proposal, and NMS submitted a lower price (NMS proposed a price of [deleted] while CMI proposed a price of [deleted]). The other competitive range offeror's proposal also was assigned identical adjectival ratings except in the technical management area (a subfactor under technical approach), where CMI's proposal received a rating of [deleted] while the other firm's proposal received a rating of [deleted]; this firm also proposed a price that was lower than the price proposed by CMI ([deleted] versus CMI's price of [deleted]). Agency Report (AR), exh. 5, at 6. The record shows that, because there were two lower-priced proposals with non-price ratings that were either equal to or better than the ratings assigned to the CMI proposal, the agency determined that CMI had no reasonable chance of receiving the award. *Id.* at 7.

CMI maintains that the agency improperly failed to conduct a price evaluation in connection with its elimination of CMI from the competitive range. Much of CMI's argument focuses on the government estimate used by the agency in connection with its evaluation.² According to CMI, since the agency used an estimate reduced by a stated percentage to account for competition, the agency's price comparison, and hence its establishment of the competitive range, was flawed. This argument is without merit. The record shows that CMI was not eliminated from the competitive range as a result of the agency's comparison of its price to the government estimate. Rather, CMI was eliminated because its proposal was rated no better than equal to the other two competitive range offerors' proposals (CMI does not challenge the technical evaluation), and its price was significantly higher than both of those offerors' prices. AR, exh. 5, at 7. Thus, since the government estimate had nothing to do with the elimination of CMI's proposal from the competitive range, the manner

² The record shows that, in developing the government estimate, the agency first calculated the anticipated price for the services by developing loaded hourly rates for the labor categories in question. Using these hourly rates, it developed loaded task prices, and then compared these loaded task prices to prices being paid under numerous current contracts. Finally, the agency reduced the government estimate by either 10 or 20 percent (depending on the nature of the task) to account for what the agency anticipated would be vigorous competition for the requirement. AR, exh. 12.

in which the estimate was developed does not provide a basis for challenging the agency's actions.³

CMI maintains that, because of the allegedly faulty government estimate, the agency never considered that the price offered by NMS (one of the two competitive range offerors) was unreasonably low when compared to the cost of actually performing the work. This argument is without merit. Where, as here, a lower-priced proposal is found technically equal to the other proposals under consideration for a fixed-price contract, its lower price does not provide a basis (in the absence of a solicitation provision relating to a price realism analysis) for excluding that proposal from the competitive range.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ CMI asserts that the agency improperly used only price in establishing the final competitive range. This is not the case. As discussed, the agency's conclusion that CMI did not stand a reasonable chance of receiving award was based on a comparison of both CMI's technical proposal and price with those of the two competitive range offerors. AR, exh. 5, at 7.