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**Comptroller General
of the United States**

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

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Decision

Matter of: Flight Safety Services Corporation

File: B-403831; B-403831.2

Date: December 9, 2010

Richard B. Oliver, Esq., David J. Ginsberg, Esq., and Keith M. Byers, Esq., McKenna Long & Aldridge LLP, for the protester.

Joseph P. Hornyak, Esq., Gregory Hallmark, Esq., and Megan Mocho Jeschke, Esq., Holland & Knight LLP, for CAE-USA, Inc., an intervenor.

Christopher S. Cole, Esq., Department of the Air Force, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to reasonably evaluate awardee's low fixed price is denied where the solicitation provided only that the agency may reject an offeror's proposal where its price was "unreasonably" low such that it reflected an inherent lack of competence or failure to comprehend the complexity and risks of the program, and the record reflects that the agency considered the awardee's low price and raised the matter with the awardee during discussions, and the awardee advised the agency that it understood the requirements and intended to submit a low price because securing award of the contract was a key element of its corporate strategy.

DECISION

FlightSafety Services Corporation of Centennial, Colorado, protests the award of a contract to CAE-USA, Inc. of Tampa, Florida, under request for proposals (RFP) No. FA8223-10-R-50094, issued by the Department of the Air Force for KC-135 Aircrew Training System support services at 13 Air Force bases worldwide. FlightSafety argues that the Air Force failed to reasonably evaluate CAE-USA's unrealistically low price and CAE-USA's past performance.

We deny the protest.

BACKGROUND

The RFP, issued on November 6, 2010, contemplated the award of a fixed-price contract¹ with a 3-month base period, and eight 1-year options, to provide services in support of the KC-135 Aircrew Training System (ATS) including operations and maintenance, concurrence modifications, Training System Support Center sustainment, courseware development, and student training at various locations. Award was to be made using what the RFP described as a “Performance Price Trade-off” evaluation methodology. Pursuant to this methodology, the Air Force would determine which technically acceptable proposal represented the best value based on a trade-off between past performance and price, with past performance considered to be “significantly more important” than price. RFP at 238.

With respect to price, offerors were required to submit fixed-prices for various contract line item numbers (CLIN) and sub-CLINs. For example, under CLIN 0001, offerors were required to propose a fixed price for providing overall program management during the base period of performance and under CLIN 0002, they were to provide a fixed price for providing various technical support activities.

As it relates to the protest, the pricing for CLINs 0003 and 0004 was more complex. Generally, CLINs 0003 and 0004 sought fixed prices for specific types of training at various locations. Both CLINs were composed of sub-CLINs and for each sub-CLIN, the RFP specified a maximum quantity of training per year, either in terms of the number of students attending the training (the 0003 sub-CLINs) or the number of flight simulation periods conducted (the 0004 sub-CLINs). Depending on the particular subCLIN, offerors were to provide a specific range of prices with the top price range reflecting the maximum quantity. RFP at 4-12.

By way of example, sub-CLIN 0003AA sought fixed prices to provide pilot training and specified that the maximum number of students would be 544 over the course of 1 year. Under this sub-CLIN, offerors were required to propose eight separate price ranges, with each price range reflecting a different number of students per year. Based on the specified maximum number of students, the maximum price range was limited to 544 students per year. RFP at 5.

Section M of the RFP stated that offerors’ prices would be evaluated for “Reasonableness and Balance.” RFP at 239. For the purpose of evaluating offerors’

¹ The RFP provided that certain “incidental items” (i.e., unprogrammed travel, spare parts, surge work, and certain ramp-up work) would be priced on a cost-reimbursable basis. These items were estimated to amount to approximately 0.5% of the total value of the contract. Agency Report (AR), Tab 4(a), Initial Evaluation Briefing Slide 20, at 10.

prices, the RFP specified that the Air Force would calculate a total evaluated price, which was the sum of the fixed-price CLINs. In order to calculate the total evaluated price, the RFP explained that the Air Force would select, without disclosing to the offerors, a particular “throughput” level (i.e., number of students and simulation periods) and use each offeror’s corresponding range and proposed price to determine its price for the sub-CLINs under CLINs 0003 and 0004. RFP at 240.

Under the heading “Other Information” within Section M, the RFP stated as follows:

The Government may reject any proposal evaluated to be unreasonable in terms of program commitments, including contract terms and conditions, or unreasonably high or low in cost when compared to Government estimates, such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program.

RFP at 243.

Regarding past performance, the RFP established that the Air Force would consider both relevancy and qualitative information concerning offerors’ recent (within the past 3 years) past performance and, based on this information, assign overall confidence assessment ratings (“high confidence,” “confidence,” “limited confidence,” “no confidence,” or “unknown confidence”). RFP at 242. Specifically, the RFP provided that the Air Force would assign relevancy and performance ratings in the areas of program management, systems engineering, and quality. As it relates to the protest, in determining the relevance of individual contracts, consideration was to be given to the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract was being evaluated. The relevancy ratings were broadly defined as follows:

Rating	Definition
Highly Relevant (HR)	Past/present performance effort involved essentially the same magnitude of effort and complexities this solicitation requires.
Relevant (R)	Past/present performance effort involved much of the magnitude of effort and complexities this solicitation requires.
Somewhat Relevant (SR)	Past/present performance effort involved some of the magnitude of effort and complexities this solicitation requires.
Not Relevant (NR)	Past/present performance effort involved little or none of the magnitude of effort and complexities this solicitation requires.

RFP at 241.

The Air Force received four proposals in response to the RFP, including proposals from FlightSafety and CAE-USA. Both firms' proposals were evaluated as technically acceptable and received overall past performance ratings of high confidence. CAE-USA's total final evaluated price was \$203,014,523, while FlightSafety's was \$300,109,834. The total evaluated prices for the two other offerors were \$308,826,384 and \$344,241,711. AR, Tab 8(a), Final Decision Brief, at 50. The Source Selection Authority (SSA) determined that CAE-USA's offer represented the best value to the government. In making this decision, the SSA specifically indicated that, given CAE-USA's significantly lower price, the selection decision would not have been any different had CAE-USA received only a rating of "confidence" under the past performance factor. Supp. AR, Tab 5, Source Selection Decision Document, at 4.

The Air Force awarded the contract to CAE-USA on August 31, 2010, and provided FlightSafety with a debriefing. This protest followed.

DISCUSSION

FlightSafety argues that the Air Force failed to evaluate CAE-USA's price for realism as required by the RFP and that had the agency conducted such an assessment, it would have recognized that CAE-USA's significantly lower price was not realistic. FlightSafety also argues that the Air Force disregarded the relevance standards set forth in the RFP when it assigned CAE-USA a "high confidence" past performance rating.

Price Realism

As a threshold matter, the parties disagree as to whether the RFP in fact required the Air Force to perform a price realism evaluation. FlightSafety argues that the RFP provided for assessing price realism where it indicated that the Air Force may reject an offeror's proposal if it is determined to be "unreasonably . . . low in cost when compared to Government estimates, such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program," RFP at 243, and that the agency failed to properly consider whether CAE-USA's low price was in fact realistic. The Air Force maintains that the RFP merely established that the offerors' prices would be evaluated for reasonableness.

As a general matter, when awarding a fixed-price contract, an agency is only required to determine whether offered prices are fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 9.

Moreover, since the government's liability is fixed when it awards a fixed-price contract—the contractor bears the risk and responsibility for actual performance, see FAR § 15.404-1(a)—an agency need not concern itself with the contractor's actual costs of performance when awarding a fixed-price contract. It may, nonetheless, include in a solicitation a provision which provides for a price realism evaluation for the purpose of assessing whether an offeror's low price reflects on its understanding of the contract requirements. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5. Where a solicitation provides for a price realism evaluation, the depth of an agency's evaluation in this regard is a matter within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. In reviewing protests challenging price realism evaluations, our focus is on whether the agency's review was reasonable and consistent with the terms of the solicitation. Grove Resource Solutions, Inc., supra. Where there is no relevant evaluation criterion pertaining to realism or understanding, however, a determination that an offeror's price on a fixed-price contract is too low generally concerns the offeror's responsibility, i.e., the offeror's ability and capacity to successfully perform the contract at its offered price. See J.A. Farrington Janitorial Servs., B-296875, Oct. 18, 2005, 2005 CPD ¶ 187 at 4; CSE Constr., B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 4-5.

Here, although the RFP did not state that offerors' prices would be evaluated for "realism" per se, it effectively provided for such an evaluation where it established that the Air Force could reject a proposal if the offeror's low price reflected an inherent lack of competence or failure to comprehend the complexity and risks of the program. As explained above, analyzing whether an offeror's fixed price is so low that it reflects a lack of understanding of solicitation requirements is the crux of a price realism evaluation, and by informing offerors that their proposals would be evaluated in this regard, the RFP established that the Air Force would, in essence, assess offerors' prices for realism.

Having concluded that the RFP contemplated what was, in essence, a price realism assessment, the question becomes whether the Air Force properly evaluated CAE-USA's price, in light of this provision. The record reflects that the Air Force reasonably considered CAE-USA's low price and concluded that its low price did not warrant rejection of CAE-USA's offer.

Notwithstanding the fact that the Air Force has argued that it was not required to evaluate CAE-USA's price for realism, throughout the evaluation process, the Air Force was, in fact, keenly aware of, and concerned about, how low CAE-USA's total

evaluated price was as compared to the total evaluated prices of the other offerors.² As reflected in the agency's initial evaluation documents, the Air Force evaluation team specifically questioned whether CAE-USA's low price reflected its "failure to grasp overall complexity, technical understanding, and risks of the program." Agency Report (AR), Tab 4(a), Initial Evaluation Briefing Slides, at 54. As a consequence, the Air Force specifically raised the matter with CAE-USA in discussions. In one of the evaluation notices sent to CAE-USA, the Air Force advised the firm that its proposed prices were "significantly below the government anticipated costs" and that it was the Air Force's belief that CAE-USA had "significantly underpriced its proposal," and asked CAE-USA to "carefully review all requirements and ensure that the proposed pricing for all CLINs is sufficient, such that the offeror is confident that [it] could perform all requirements of the contract in a profitable, or at least a non-loss pricing position." AR, Tab 5, CAE-USA Evaluation Notice, at 2-3.

During face-to-face discussions, CAE-USA explained that it had proposed [DELETED] for the fixed-price CLINs and stated that the KC-135 Aircrew Training Systems contract

is a very important program for CAE-USA. This is an expansion of what we do every day internationally. We build and manage training centers all over the world. We have a lot of military operations, as well. We operate a C-130 training center – the only commercial C-130 training center in the world in Tampa, but we don't have an [Aircrew Training System] to manage. And this is very key to our strategic plan, so we were very aggressive in our approach. We understand that.

AR, Tab 6, CAE-USA Discussions Journal, at 51.

CAE-USA also provided a written response to the Air Force's concerns about its low price, and reiterated its position that the contract was very important and linked to CAE-USA's "corporate strategic goals." AR, Tab 5, CAE-USA Discussion Questions and Responses, at 3. CAE-USA emphasized that it operated multiple training centers throughout the world and that it had "a full grasp of the overall scope and complexity of the KC-135 program." *Id.* CAE-USA further explained as follows:

² The record reflects that the government had estimated the value of the contract to be \$847 million. This estimate, however, was given little weight since it was calculated using workload assumptions higher than those used to calculate offerors' total prices and because it was based on the management and technical approach of the incumbent contract, which had been awarded 18 years prior. Contracting Officer's (CO) Statement at 10.

We performed a thorough analysis of the requirements of this effort. Based on our experience from relevant programs, we carefully estimated our costs incorporating efficiencies from lessons learned to offer the Government a competitive price. . . . We are confident that we can perform all requirements of the contract in a non-loss position.

Id.

After receiving final proposals, and reviewing CAE-USA's response to the evaluation notice question regarding its pricing, the Air Force again considered the fact that CAE-USA's price was very low and concluded that it did not provide a basis to reject the proposal submitted by CAE-USA. AR, Tab 8.b, Final Evaluation Meeting Minutes, at 2.

FlightSafety argues that the Air Force's determination in this regard was not reasonably based because the Air Force merely accepted a general response from CAE-USA regarding its low price. According to FlightSafety, the Air Force should have more critically questioned and analyzed what it characterizes as "red flags" associated with CAE-USA's low price, such as CAE-USA's expectation that [DELETED] (the Air Force learned this fact as a consequence of CAE-USA explaining, during discussions, why it appeared that CAE-USA [DELETED]); the fact that it proposed [DELETED] for the fixed-price CLINs; the large disparity between CAE-USA's prices for CLINs 0003 and 0004, as compared to those of FlightSafety (CAE-USA's prices for those CLINs were [DELETED] and accounted for [DELETED] the price difference); and the fact that CAE-USA was aggressively pricing the contract.³

Notwithstanding the so-called "red flags" which FlightSafety maintains should have prompted greater concern within the Air Force, or at a minimum a more probing analysis, as noted above, the depth of an agency's price realism evaluation is a matter within the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., supra. The record shows that the Air Force recognized that 1) CAE-USA's price

³ FlightSafety also argues that the Air Force should have been concerned by the fact that CAE-USA's proposal was premised on hiring the "incumbent exempt workforce" ("exempt" refers to those employees who are not covered by the Fair Labor Standards Act), yet CAE-USA was proposing to pay a substantially reduced wage from the actual current rates that the incumbent exempt workforce was being paid. Protester's Comments at 8. The record, however, does not demonstrate, as FlightSafety maintains, that CAE-USA in fact had proposed to utilize the incumbent exempt workforce since the argument stems entirely from a general statement by FlightSafety during face-to-face discussions that "in this business you pick up incumbents for the most part." AR, Tab 6, CAE-USA Discussions Journal, at 71. Moreover, there is no basis for FlightSafety's contention that CAE-USA anticipated paying wages lower than those being paid to the incumbent workforce.

was low as compared with the prices submitted by the other offerors; 2) the issue was raised with CAE-USA in discussions; 3) CAE-USA expressly confirmed its understanding of the requirements, an understanding supported by CAE-USA's experience performing similar requirements; and 4) CAE-USA explained that it was aggressively pursuing the contract and therefore intended for its price to be low since it viewed the contract as an important aspect of its corporate strategy. After considering CAE-USA's response, the Air Force declined to reject CAE-USA's proposal, thereby accepting CAE-USA explanations, as well as any of the risks that might underlie CAE-USA's low price. A more probing inquiry was simply not contemplated by the RFP, or otherwise required, given that the RFP did not provide for the submission of underlying cost information for CLINs 0003 and 0004 [DELETED]. To the extent FlightSafety believes that the magnitude of the price difference demonstrated that CAE-USA's price was too low to be acceptable, this argument reflects FlightSafety's disagreement with the agency's decision not to reject CAE-USA's proposal and does not provide a basis for our Office to conclude that the agency's decision in this regard was unreasonable.

Past Performance

FlightSafety argues that the Air Force unreasonably rated as "highly relevant" two of CAE-USA's reference contracts, one relating to the Air Force's C-130J aircraft MATS program ("JMATS") and the second relating to the Navy's MH-60S Operational Flight Trainers/Weapons Tactics Trainers program ("MH-60S"). According to FlightSafety, CAE-USA did not perform operations maintenance and aircrew instruction on these contracts, and, as a consequence, they should not have been evaluated as "highly relevant." FlightSafety also objects to the Air Force having evaluated as "relevant" five other CAE-USA reference contracts. According to FlightSafety, these contracts should have been evaluated as only "somewhat relevant" because CAE-USA was only performing as a subcontractor, the dollar value of the contracts was low, CAE-USA did not provide flight simulators, it did not provide operations and maintenance, or CAE-USA did not provide aircrew instruction.⁴

As an initial matter, FlightSafety's arguments are entirely at odds with the Air Force's actual past performance evaluation, which did not simply rate contracts as "highly

⁴ FlightSafety also argued that the agency overrated the relevance of CAE-USA's subcontractors' past performance references. FlightSafety's allegations in this regard, however, failed to appreciate the fact that CAE-USA's subcontractors were proposed to perform certain specific activities under the contract and the agency reasonably evaluated the relevance of their past performance as it related to the portion of the requirements that they were to perform. This was consistent with the terms of the RFP, which provided that the Air Force would assess relevancy in terms of the "portion of the effort" being proposed for performance by a subcontractor. RFP at 241.

relevant” or “relevant” overall. Rather, as contemplated by the RFP, in evaluating CAE-USA’s past performance references, the Air Force assigned three relevance ratings for each contract, one each for the areas of program management, systems engineering, and quality. Thus, for the JMATS contract, the record reflects that the Air Force assigned ratings of “highly relevant,” “relevant,” and “highly relevant” under the three areas of consideration, respectively. In its protest, FlightSafety has not specifically addressed this evaluation scheme and explained why CAE-USA was not entitled to the relevance ratings it in fact received under the areas of program management, systems engineering, and quality. Similarly, while FlightSafety complains that the agency could not have considered CAE-USA’s MH-60S contract as relevant, it fails to address the fact that the Air Force only rated this contract as relevant under two of the three areas of consideration, identifying the contract as “not relevant” under systems engineering.

In any event, notwithstanding FlightSafety’s assertions to the contrary, CAE-USA’s proposal indicates that it did in fact perform maintenance activities under the JMATS contract, as well as aircrew training and training systems support center operations. Under the MH-60S contract, with the exception of aircrew training and training systems support center operations, CAE-USA’s proposal indicated that it performed all other major activities required under the KC-135 ATS contract, to include maintenance and concurrency modifications activities. While FlightSafety generally contends that the Air Force should not have considered this contract “highly relevant,” we have no basis to conclude that the evaluation, which, as noted above, was premised on an examination of three specific areas for relevance, program management, systems engineering, and quality, was unreasonable. In reaching this conclusion we note that the RFP defined the ratings of “highly relevant” and “relevant” in broad terms. Past performance was “highly relevant” where it involved “essentially the same magnitude of effort and complexities of this solicitation,” and the rating of “relevant” meant that past performance effort involved “much of the magnitude of effort and complexities this solicitation requires.” RFP at 241. Thus, contrary to FlightSafety’s suggestion, the mere fact that a reference supplied by CAE-USA did not involve performing requirements identical to those contained in the solicitation did not mean that the Air Force was precluded from assigning a rating of “highly relevant” under the three areas of consideration.

As a final matter, to the extent FlightSafety could demonstrate that the agency failed to reasonably consider the relevance of some of CAE-USA’s contracts, for example,

due to the dollar value of the contract,⁵ FlightSafety cannot establish that it suffered any prejudice in connection with any such errors. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; in effect, a protester must show that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armorworks Enter's., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. In this regard, there is little doubt that CAE-USA's proposal demonstrated that it had highly relevant and relevant past performance and that its qualitative performance was identified in most instances as being exceptional and very good. Thus, there is no reasonable basis to conclude that if some of its past performance references were considered only somewhat relevant, or not relevant at all, that CAE-USA would have received a past performance rating lower than "satisfactory confidence." Since the contemporaneous source selection decision expressly advised that given CAE-USA's significant price advantage, the award decision would not have changed had CAE-USA only received a "satisfactory confidence" rating under the past performance factor, there is no reasonable possibility that FlightSafety suffered any prejudice as a consequence of the agency's assessment of the relevance of the awardee's past performance references.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ FlightSafety contends that the agency entirely failed to consider the magnitude of CAE-USA's contracts, however, for one of the contracts specifically cited by FlightSafety in this regard (CAE-USA's WESTPAC COMS contract), the record reflects that the Air Force rated the contract as only "somewhat relevant" for each of the three areas of evaluation, and specifically characterized the contract, which had a dollar value of approximately \$2.3 million, as "smaller" and "less involved." Supplemental AR, Tab 3(a), Final Team Rating Worksheet for CAE, at 9.