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Washington, DC 20548**

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## Decision

**Matter of:** George G. Sharp, Inc.

**File:** B-408306

**Date:** August 5, 2013

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Michael J. Gardner, Esq., Troutman Sanders LLP, for the protester.  
William A. Roberts III, Esq., Wiley Rein LLP, for Global, A 1<sup>st</sup> Flagship Company, the intervenor.  
Robert J. McMullen, Esq., Department of the Navy, for the agency.  
K. Nicole Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protester's allegation that during discussions it was misled by the agency not to further reduce its proposed costs for a cost-reimbursement contract is denied where the agency provided the protester an opportunity to explain its proposed costs and explicitly advised the protester to review all aspects of its cost proposal, including its fee, in light of the competitive environment surrounding the solicitation.

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### **DECISION**

George G. Sharp, Inc. (Sharp), of Virginia Beach, VA, protests the award of a contract to Global, A 1<sup>st</sup> Flagship Company (Global), of Irvine, CA, by the Department of the Navy, under request for proposals (RFP) No. N00189-12-R-Z010, for inactive ship maintenance and repair services. Sharp asserts that the Navy's conduct of discussions was misleading with respect to its cost proposal.<sup>1</sup> Protest at 3, 5.

We deny the protest.

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<sup>1</sup> The protester also argued that the agency's cost realism evaluation of the awardees' proposal was unreasonable. We dismissed this allegation as failing to set forth a valid basis for protest where the challenge was based on the singular fact that the agency made no adjustment to the awardees' proposed costs, which were lower than those proposed by the protester.

## BACKGROUND

On February 3, 2012, the agency issued the RFP, seeking proposals for services necessary to operate and maintain all vessels for the Naval Sea Systems Command Inactive Ship Maintenance Office (NISMO) at Bremerton, WA. Agency Report (AR) at 1. The RFP contemplated the award of an indefinite-delivery/indefinite-quantity cost-plus-fixed-fee contract with fixed price ordering provisions for one base year plus four 1-year options. According to the RFP, award was to be made on a best value trade-off basis, considering performance and management approach, past performance, personnel resources, and cost. RFP at 98-99. With regard to cost, the RFP advised that the agency would perform a cost realism evaluation and consider the “offeror’s ability to project costs which are realistic and reasonable and which indicate that the offeror understands the nature and scope of work to be performed.” Id. at 105.

The solicitation closed on April 9, and the agency received proposals from four offerors, including Sharp and Global.<sup>2</sup> AR at 3. After conducting an initial evaluation, the CO concluded that both Sharp and Global appeared to have understated their proposed costs. AR at 3 and AR, Tab 6, Pre-Negotiation Clearance, at 3.

The CO opened discussions with Sharp by letter dated August 3. In the letter, the CO informed Sharp that its costs appeared understated in several specific areas based on a consideration of Sharp’s actual costs under the incumbent contract, as well as information available from the Defense Contract Audit Agency (DCAA) and the Defense Contract Management Agency (DCMA). Protest, Exh. 3, Discussion Letter from Navy, August 3, 2012, at 2. Specifically, the agency advised Sharp that its proposed direct labor rate for the program manager labor category appeared understated, and that its overhead and general and administrative (G&A) rates, also appeared understated. Id. The agency also advised Sharp to review its proposed fixed fee, “[t]aking into account the competitive environment under which this solicitation has been issued.” Id. The agency asked Sharp to address each of these areas of concern in a written response. Id. at 3.

In its response, Sharp provided additional justification to support its proposed costs and noted that it would review its proposed fee to “make sure it is appropriate.” Protest, Exhibit 4, Discussion Letter from Sharp, August 9, 2012, at 1-2.

On August 29, the agency informed Sharp that, based on the information furnished with the proposal, and its response to the agency’s discussion letter, the contracting office had concluded that Sharp’s total proposed cost was realistic. Protest, Exhibit

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<sup>2</sup> The other two offers are not relevant to this protest and are not further discussed.

5, Discussion Letter from Navy, August 29, 2012, at 2. The agency requested that Sharp submit a final proposal revision (FPR) and advised Sharp that “taking into account the competitive environment under which this solicitation has been issued, you are encouraged to review all cost elements of your...proposal, including your proposed fixed fee.” Id.

Sharp submitted its FPR on September 5, and made no changes other than a reduction in its fixed fee, resulting in a final total proposed cost of \$27,670,824. Id. Global’s final total proposed cost of \$24,369,425 was slightly higher than its initial proposed cost (\$23,842,130). AR, Tab 7, Post-Negotiation Clearance, at 12.

The agency’s evaluation of Sharp’s and Global’s final proposals was as follows:

Offeror	Performance/ Management	Past Performance	Personnel Resources	Overall Tech Rating	Proposed Cost	Evaluated Cost
Global	Outstanding	Substantial Confidence	Good	Outstanding	\$24,369,425	\$24,369,425
Sharp	Good	Substantial Confidence	Good	Good	\$27,473,049	\$27,473,049

AR, Tab 7, Post-Negotiation Clearance, at 12.<sup>3</sup>

On May 1, 2013, the Navy notified Sharp that it had awarded the contract to Global. Protest at 3. Sharp received a debriefing on May 6, and this protest followed.

## DISCUSSION

Sharp argues that the Navy’s discussions were misleading because the Navy advised Sharp to “increase its proposed [cost] on the basis that it was ‘understated,’ when, in reality, Sharp’s total proposed cost was already \$3 million higher than Global’s overall evaluated [cost].” Protest at 6. Sharp contends that it should have been advised that its proposed costs were too high, and advised to find ways to reduce its costs. Id. Sharp argues that by advising Sharp that its costs were understated, the Navy misled Sharp into thinking that the only cost adjustment it could reasonably consider making would be an upward adjustment. Sharp’s Response to Navy’s Request for Partial Summary Dismissal, at 2. As a result,

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<sup>3</sup> Ratings for the performance/management and personnel resources factors ranged from unacceptable to outstanding. AR, Tab 7, Post-Negotiation Clearance, at 12. Ratings for the past performance factor ranged from unknown confidence to substantial confidence. Id.

Sharp argues it was denied an opportunity to make its cost proposal more competitive.

In negotiated procurements, if an agency conducts discussions, the discussions must be meaningful. E.g., The Communities Group, B-283147, Oct. 12, 1999, 99-2 CPD ¶ 101 at 4. That is, agencies must lead offerors into the areas of their proposals that contain significant weaknesses or deficiencies, and it may not mislead offerors. While an agency must advise an offeror if its proposed cost/price is considered unreasonably high, Price Waterhouse, B-220049, Jan. 16, 1986, 86-1 CPD ¶ 54 at 6-7, an agency need not advise an offeror that its costs are higher than those of its competitors if the higher costs are not viewed as unreasonable. E.g., DeTekion Sec. Sys., Inc., B-298235, B-298235.2, July 31, 2006, 2006 CPD ¶ 130 at 15.

We do not find that the Navy's discussions with Sharp were misleading. As an initial matter, the record does not support Sharp's assertion that the Navy advised Sharp to increase its "total proposed cost." To the contrary, the record shows that, the Navy accurately conveyed its cost realism concerns regarding specific elements of Sharp's costs, which initially appeared understated based on a comparison of the proposed costs with Sharp's incumbent contract costs, as well as information from DCAA and DCMA.<sup>4</sup>

By informing Sharp of its concerns, the Navy properly lead Sharp into the areas of its proposal that required Sharp's own input in the form of revisions, explanations, clarifications, or amplifications. Rather than encouraging Sharp to raise its costs, the agency requested further justification for the prices the protester had initially proposed.

Additionally, the Navy did not prohibit Sharp from lowering its total proposed cost, and, in fact, explicitly encouraged Sharp to review all the cost elements of its proposal, in light of the competitive environment. Protest, Exhibit 5, Discussion Letter from Navy, August 29, 2012, at 2. Sharp's decision to preserve its initial cost estimate, with the exception of its fee, was an exercise of its independent business judgment and in no way suggests misleading or otherwise improper discussions.

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<sup>4</sup> When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed costs are not considered controlling because, regardless of the costs proposed, the government is bound to pay all actual, allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103 at 4. Consequently, an agency must perform a cost realism analysis to evaluate the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(2); Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9.

See Enterprise Information System, B-401037.5, B-401037.6, Dec. 1, 2009, 2009 CPD ¶ 233 at 3.

In addition to arguing that the Navy misled it to believe that the only cost adjustment Sharp could make would be an upward adjustment, Sharp also asserts that the Navy should have explicitly advised it to lower its costs in order to be competitive with the lower cost proposal submitted by Global. Where, as here, an offeror's costs are high in comparison to those of its competitors, the agency may, but is not required to, address the matter during discussions. Mechanical Equipment Company, Inc. et al., B-292789.2, et al., Dec. 15, 2003, 2004 CPD ¶ 192 at 18. Accordingly, if an offeror's costs are not so high as to be unreasonable and unacceptable for contract award, the agency may reasonably conduct meaningful discussions without advising the offeror that its costs are not competitive. Id.

As mentioned above, the Navy reminded Sharp of the competitive environment and encouraged the company to review its proposed costs. That said, since the agency viewed Sharp's cost proposal as acceptable for contract award, considering its proposed approach, and did not view its proposed costs as unreasonably high, it was not required to expressly raise the matter in more detail than to advise Sharp to be mindful of the competitive environment. In our view, this reminder should have served as a caution to Sharp. In short, we find that the agency did not mislead Sharp during discussions.

The protest is denied.

Susan A. Poling  
General Counsel