

MUST AN AGENCY PERMIT PRICE CHANGES IN FINAL PROPOSAL REVISIONS?

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Recently, in *Cellebrite Inc.*, B-430371.2, April 28, 2022, the Government Accountability Office (“GAO”) discussed limitations on the scope of Final Proposal Revisions (“FPRs”) as part of an agency corrective action. The GAO concluded that the agency’s decision to limit any price changes in offerors’ proposals to those “narrowly tailored corrections [that] materially impacted previous proposal submission.”

The Department of Homeland Security, U.S. Secret Service issued a solicitation for fixed price instructional services. Cellbrite filed a protest of the award, alleging a need to clarify language in the corporate experience and management/staffing approach factor. The agency issued a corrective action notice amendment which stated that “the Government will take into account experience regarding predecessor companies and key personnel with recent and relevant experience.”

Offerors were notified that they could request an opportunity to amend, in their FPR, other portions of their proposals if they could demonstrate that the corrections “materially impacted previous proposal submissions. When Cellbrite requested that the agency allow it to amend its price because its investment and growth increased efficiencies and reduced operating costs in the interceding 5 months, the agency denied the request. Cellbrite then protested, stating that because the agency had decided to consider the experience of predecessor companies and key personnel, offerors should have been permitted to revise any aspect of their proposal in the FPR, including price.

The GAO disagreed with Cellbrite, noting that an agency may reasonably limit the scope of FPR revisions, provided that the limitation is “appropriate to remedy the procurement impropriety.” GAO held that the limitation on changing price in the FPR was narrowly tailored. Further, GAO pointed to FAR 15.305(a)(2)(iii), Proposal Evaluation, which states:

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

Therefore, the agency was already permitted to consider key personnel and predecessor companies, so there was no material change in this regard. The agency clarification did not change how offerors would be evaluated.

Finally, GAO noted that the agency’s denial of Cellebrite’s request to modify its price was reasonable, since, rather than being precipitated by proposal changes caused by agency corrective action, Cellebrite sought to revise its price because it changed its business judgment and it wanted to pass along efficiencies associated with its recent corporate restructuring.

Takeaway. Where there are scope limitations in an FPR (such as price) offerors will be required to comply, unless the limitations do not remedy the problem in the procurement.

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