

## **CONTRACT REQUIREMENT TO MEET PROPOSED STAFFING LEVELS MAKES DEDUCTIONS APPROPRIATE**

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Phoenix Management submitted a claim for amounts withheld in a fixed-price building maintenance and custodial contract with the General Services Administration (“GSA”). *Phoenix Mgt., Inc. vs. GSA*, CBCA 7091, Dec. 2, 2021. The solicitation required offerors to submit a “Management Plan Worksheet” for the base year showing its proposed employment mix. Phoenix’s Management Plan showed the employment of 15.1 full time equivalents (“FTEs”) in the base year. The contract permitted a labor mix review 60 days prior to the issuance of the first option year, but stated that “any approved adjustment to the labor mix will not result in an increase in price.”

The requirement to staff in accordance with the contractor’s proposal was stated in four different places in the contract: in the Staffing Requirements section, in the Personnel Section, in the Management Plan section and in response to a question which was incorporated in the contract that stated that offerors were to propose staffing levels that they thought were appropriate to meet the requirements, but “once a proposal is accepted the government expects the contractor will provide the staffing level proposed.”

The contract also provided for fee deductions based on number of personnel proposed minus number of personnel provided. When Phoenix began to perform the contract, it employed only 13 FTEs, or 2.1 FTEs fewer that it had identified on its management plan worksheet. GSA reduced Phoenix’s monthly payment by \$7,818, pursuant to the formula in the contract.

The Civilian Board of Contract Appeals held that (1) Phoenix was required to maintain the same number of personnel that it proposed; and (2) the contract permitted GSA to make deductions if the contractor failed to provide the number of personnel proposed. Phoenix argued that all it needed to do was maintain the necessary level of performance, since this was a performance based contract. The CBCA, however, noted that such an interpretation rendered superfluous the management plan and all of the warnings in the contract that staffing levels were not to be reduced. Because the requirement to maintain staffing levels was a requirement of the contract, GSA’s use of deductions for failure to meet specifications was proper.

Takeaway. Even in a performance based contracts, a contractor must read and perform all the specific requirements of the contract. Where a certain number of employees is required, they must be provided, or deductions would be appropriate. If a contract is truly performance based, does not specify FTE minimums, and does not require that the proposed level of FTEs be provided, and makes no other requirements, then the contractor merely needs to satisfactorily perform the work, regardless of FTEs.

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