UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED: June 20, 2013

CBCA 2709

IAP WORLD SERVICES, INC.,

Appellant,

v.

DEPARTMENT OF THE TREASURY,

Respondent.

David J. Craig of IAP World Services, Inc., Cape Canaveral, FL, counsel for Appellant.

Marianna Lvovsky, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SHERIDAN**, and **STEEL**.

DANIELS, Board Judge.

The Internal Revenue Service (IRS), an entity within the Department of the Treasury, awarded a firm, fixed-price contract to IAP World Services, Inc.[1] (IAP) for "all management,

[1] The contract was awarded to IAP World Services, Inc. The company is also referred to, in some filings with the Board, by the name of its parent company, IAP Worldwide Services, Inc. *See*, as to the relationship between the two firms, <<http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=
(continued...)

supervision, labor, materials, supplies, and equipment necessary for operation and maintenance of building equipment at [six] IRS facilities." IAP has filed two claims for reimbursement of costs it incurred, in addition to those it expected, in performing fixed-price portions of the contract. The contracting officer denied both of the claims, and IAP appealed. Last year, we denied the appeal of one of those claims, for removal of snow from the facility in Ogden, Utah. *IAP World Services, Inc. v. Department of the Treasury*, CBCA 2633, 12-2 BCA ¶ 35,119. We now consider the appeal of the other claim, for performance of service calls at the facility in Philadelphia, Pennsylvania.

The IRS maintains that this claim is much like the snow removal matter and should be denied for like reasons. IAP contends that this one is quite different from the other. We agree with the contractor and grant this appeal.

Findings of Fact

The IRS awarded the contract to IAP on August 31, 2005. The contract covered a phase-in period, which per amendment 1 ran until March 13, 2006, and five option periods, each one year in duration, with the first beginning on March 14, 2006. The IRS exercised all of the options and later extended the contract through May 8, 2011.

The contract required IAP to provide "basic services," including facility operation and performance of service calls and repairs required by the Government, for a fixed price in each contract period. (Some work could be ordered at additional cost, but the parties agree that it is not relevant to this appeal.) A "service call" was defined by the contract to be a demand by the Government to remedy unscheduled building-related problems. Examples given were "taking measures to respond to and correct building related deficiencies such as malfunctioning HVAC [heating, ventilation, and air conditioning] systems resulting in hot/cold complaints, miscellaneous electrical, plumbing, architectural, carpentry, and structural system repairs." The contract's fixed price included the first $2500 of labor, materials, and subcontract costs of work under each service call.

The IRS included in the request for proposals (RFP) which led to this contract technical exhibits which showed service call history, equipment to be maintained, and government furnished items at the various facilities. Among the technical exhibits was number TE-3-PA, which was entitled "Philadelphia Service Call Analysis FY [fiscal year] 03." This exhibit shows that during January, February, and March of 2003, there were 472

---

[1] (...continued)
4235284>> (last visited June 19, 2013).

service calls at the Philadelphia facility and that the service call labor hours there were distributed in the following way:

Duration	Percentage
Equal to or less than 1 hour	88.1%
More than 1 hour to equal to or less than 4 hours	11.4%
More than 4 hours to equal to or less than 8 hours	0.4%
More than 8 hours to equal to or less than 12 hours	0.0%
More than 12 hours to equal to or less than 32 hours	0.0%
More than 32 hours	0.0%

Questions posed by prospective offerors, and responses to those questions, were published by the IRS in amendments to the RFP. The interchange demonstrated that prospective offerors were concerned that the data provided by the agency did not give them enough information to price the contract work. One company asked the agency to consider an alternative pricing arrangement. This request was refused. Another company asked for data covering longer periods of time for several locations, including Philadelphia. The agency said that it had already provided all available historical data, notwithstanding the fact that the IRS had been performing all relevant work itself at the Philadelphia site for the previous five years.

The matter was also raised in this comment by a prospective offeror:

> Sub-Factor 2. Service Calls has . . . requirements[] which are difficult to estimate based upon the uncorrelated data provided by the government . . . , the limited on-site time available for an examination (with no questions answered and no documents provided when requested per the CO's [contracting officer's] guidance), and incomplete historical information related to service calls generated. . . . Additionally, this contract is a firm-fixed price contract, and as such it is up to the contractor to determine what equipment and supplies are required to perform the work and to have those available to accomplish the task. To estimate requirements without having any parameters related to the work is both risky and foolish.

The IRS responded with the following statement:

> Sufficient information on building requirements and equipment is contained in the Technical Exhibits. When used in conjunction with the offeror's experience, it provides a reasonable basis to determine materials and

equipment required to support service call work under $2,500 and service call materials that should be stocked on-site.

IAP states, and the IRS does not contest, that the contractor proposed its price for service calls at the Philadelphia facility in reliance on the data provided by the agency in the RFP. IAP has not provided documentation explaining how it constructed that price, but because the IRS does not assert that the price was unreasonable, we have no basis for finding it to be other than reasonable.

In performing the contract, IAP found that it was spending considerably more time per service call in Philadelphia than had been noted in RFP exhibit TE-3-PA. The contractor said that its actual labor hour distribution was as follows:

Duration	Percentage
Equal to or less than 1 hour	72.3%
More than 1 hour to equal to or less than 4 hours	24.4%
More than 4 hours to equal to or less than 8 hours	2.4%
More than 8 hours to equal to or less than 12 hours	0.7%
More than 12 hours to equal to or less than 32 hours	0.2%
More than 32 hours	0.0%

The contractor said that for the period between March 2006 and September 2008, its proposed price for basic service calls in Philadelphia was $279,797.83 and its actual costs were $759,963 – $480,165.17 more than proposed. It claimed, however, only $308,879.57, after reducing its number in response to the IRS's concern that IAP may have been spending so much time because the skill level of its employees was substandard. The certified claim was dated August 9, 2011.

The contracting officer denied the claim on the ground that the contract "was awarded as a firm fixed-price contract and is not subject to any adjustment on the basis of the contractor's actual cost experience in performing the contract." IAP appealed from this decision.

Discussion

As we explained in our decision on the snow removal claim –

> The Federal Acquisition Regulation explains that "[a] firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the

> contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss." 48 CFR 16.202-1. "It is well-established that absent a special adjustment clause, a contractor with a fixed price contract assumes the risk of increased costs not attributable to the Government." *Southwestern Security Services, Inc. v. Department of Homeland Security*, CBCA 1264, 09-2 BCA ¶ 34,139, at 168,777 (citing *Gulf Shores, LLC v. Department of Homeland Security*, CBCA 802, 09-1 BCA ¶ 34,024, at 168,305 (2008)).

12-2 BCA at 172,445.

The IRS would have us believe that these statements resolve the Philadelphia service call claim as well. They do not. As to this matter, the agency specifically told prospective offerors that the information contained in the RFP's technical exhibits, including the exhibit for the Philadelphia facility, should be a basis for determining costs. IAP followed this instruction and based its offer on that information. We held in *Admiral Elevator v. Social Security Administration*, CBCA 470, 07-2 BCA ¶ 33,676, that when an agency directs offerors to base their contract prices on material, incorrect representations, and the contractor does so to its detriment, the agency is responsible for the losses which the contractor consequently suffers. This principle clearly applies to the case now before us. While there may not have been a "special adjustment clause" explicitly written into the contract, the agency's direction as to pricing serves the same purpose as such a clause. The IRS, having told IAP to base its costs on certain data, must bear the risk that that data did not accurately represent conditions that the contractor found on the job.

Having disposed of the case in this way, we have no need to make determinations with regard to various issues raised by IAP -- whether the inaccuracy of the data was caused by negligence, whether the agency did not disclose superior knowledge about service call requirements, or whether the increased workload made performance commercially impracticable. Very simply, we conclude that because the data on which the agency told the contractor to rely in pricing the contract was faulty, the contractor relied on that data, and the contractor had to perform work beyond the agency's representations, the resulting additional work constituted a constructive change, and the agency must pay for the consequences of that change. The situation is markedly different from that in the snow removal claim, where the agency simply provided historical data to prospective offerors and did not direct them to price their proposals in reliance on that data.

The IRS has made no comment on IAP's cost calculations, so we accept the contractor's claimed amount as reasonable.

Decision

The appeal is **GRANTED**. The Internal Revenue Service shall pay to IAP World Services, Inc. the amount of the August 9, 2011, claim, $308,879.57, plus interest on that sum from the date the contracting officer received the claim until the date of payment. 41 U.S.C. § 7109 (Supp. IV 2011).

STEPHEN M. DANIELS
Board Judge

We concur:

PATRICIA J. SHERIDAN
Board Judge

CANDIDA S. STEEL
Board Judge