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United States Government Accountability Office
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Decision

Matter of: MicroTechnologies, LLC

File: B-413091.4

Date: February 3, 2017

Gregory S. Jacobs, Esq., Steven A. Pozefsky, Esq., and Erin L. Felix, Esq., Polsinelli PC, for the protester.

Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for BTAS, Inc., the intervenor.

Alexis J. Bernstein, Esq., Lt. Col. Kevin P. Stiens, and Graeme S. Henderson, Esq., Department of the Air Force, for the agency.

Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the realism of the awardee's employee compensation plan is denied where the record shows that the evaluation was reasonable and consistent with the solicitation and the requirements of the Federal Acquisition Regulation.

DECISION

MicroTechnologies, LLC, of Vienna, Virginia, a small business, protests the issuance of a task order to BTAS, Inc., of Beavercreek, Ohio, also a small business, under request for proposals (RFP) No. F1AF1C5223A001, which was issued by the Department of the Air Force for information technology support services.

MicroTechnologies argues that the Air Force unreasonably evaluated the realism of BTAS's proposed professional compensation plan.

We deny the protest.

BACKGROUND

The solicitation was issued on November 20, 2015, and sought proposals to provide information technology services in support of the Air Force Personnel Operations Activity, which is located at Joint Base San Antonio in Randolph, Texas. The competition was limited to small business firms that hold a NETCENTS-2 indefinite-

delivery, indefinite-quantity (ID/IQ) contract. RFP at 1. The RFP anticipated the issuance of a fixed-price task order with a transition period of 1 month, a base period of 11 months, and two 1-year options. Id. at 7.

The RFP provided for award to the offeror¹ that submitted a technically-acceptable proposal with the lowest price and a realistic employee compensation plan (ECP). Id. Offerors' proposals were to be evaluated for technical acceptability under the following evaluation subfactors: (1) staffing plan, (2) transition plan, and (3) quality control plan. Id. at 3-4. For the ECP evaluation, the solicitation stated that the plans "will be evaluated for realism," id. at 6, and directed offerors to submit their ECPs as follows:

The Offeror and first-tier subcontractors shall provide an Employee Compensation Plan (ECP) [in accordance with] FAR [(Federal Acquisition Regulation)] 52.222-46. The Offeror and first-tier subcontractors shall provide company policies and procedures that explain how employee salary is determined and the applicable fringe benefits such as holidays, healthcare, pension, 401K, etc. The Offeror and first-tier subcontractors shall support the ECP by providing unloaded labor rates² for each labor category proposed.

Id. at 4.

The FAR provision referenced by the RFP requires offerors to provide compensation plans for professional employees as follows:

(a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it

¹ Although firms that compete for task and delivery orders under multiple award ID/IQ contracts are commonly referred to as "vendors," our decision uses the term "offeror" to be consistent with the record provided by the agency.

² The record, and our decision, uses the terms loaded/unloaded labor rates interchangeably with burdened/unburdened labor rates.

reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

FAR § 52.222-46 (emphasis added).

The Air Force received proposals from five offerors, including MicroTechnologies and BTAS, by the initial closing date of December 28, 2015. Contracting Officer's Statement (COS) at 8. The agency found that all offerors' initial proposals were

unacceptable under the technical evaluation factor. Agency Report (AR)³ (B-413091, B-413091.2), Tab 13, Price Evaluation Memorandum and Award Decision (Award Decision), at 4. The agency conducted discussions with all five offerors and requested revised proposals. The agency found that four of the revised proposals were acceptable under the technical evaluation factor. Id. at 5. The prices for those four proposals were as follows:

Offeror	Price
BTAS	\$13,189,663
MicroTechnologies	\$18,025,128
Offeror 3	\$20,706,075
Offeror 4	\$21,506,408

Id. at 7.

The Air Force's evaluation of the four remaining offerors' ECPs identified the labor categories proposed by each offeror that were subject to the Service Contract Act (SCA), and the professional labor categories that were exempt under the SCA. Id. at 9, 13, 16-17, 39. For the professional labor categories, the agency compared each offeror's burdened labor rates to the incumbent contractor's rates.⁴ Id. at 9, 14, 17, 20. The agency found that 13 of BTAS's 16 proposed burdened rates were lower than those of the incumbent contractor. Id. at 9. For that reason, the agency conducted additional analyses which compared BTAS's proposed rates to those of the other three offerors with acceptable proposals, and to survey data for the local labor market from salary.com.⁵ Id. at 9-10. The agency's comparison of offerors' labor rates to salary.com data relied on "mapping" the labor categories, that is, finding that a labor category is comparable to another labor category proposed based on the nature of the work to be performed and the requirements for the position. See id. at 10; Supp. Agency Response (July 26, 2016) at 3.

³ References to the AR are to the report provided by the Air Force in response to the instant protest (B-413091.4), unless otherwise noted. Citations are to the page numbers added by the agency.

⁴ The incumbent contractor, Lockheed Martin, was a large business and was therefore not eligible to compete for the task order. See AR (B-413091, B-413091.2), Tab 13, Award Decision, at 2.

⁵ Salary.com is a commercial service that tracks salary data for various labor positions throughout U.S. labor markets. See www.salary.com (last visited Jan. 25, 2017).

The Air Force found that the proposed compensation for professional labor categories was realistic for BTAS, MicroTechnologies and the other two offerors. AR (B-413091, B-413091.2), Tab 13, Award Decision, at 9-10, 16, 19, 21. Based on these findings, the source selection authority selected BTAS for issuance of the task order as the offeror that submitted the lowest-priced, technically-acceptable proposal with a realistic ECP. Id. at 23. The agency notified the offerors of the award decision on April 29, 2016.

On May 4, MicroTechnologies filed a protest with our Office (B-413091), arguing that the Air Force unreasonably evaluated the offerors' ECPs and that the agency conducted unequal discussions. On August 11, we sustained the protest concerning the evaluation of the realism of offerors' ECPs for three primary reasons: (1) the agency's evaluation of ECPs was not adequately documented with regard to the mapping of labor categories; (2) the realism evaluation relied upon comparisons of burdened labor rates that did not permit meaningful consideration of the compensation to be paid to employees, and (3) the realism evaluation improperly relied upon a comparison of BTAS's burdened rates to unburdened labor rates listed on salary.com. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 8-14.

Following our decision, the Air Force conducted discussions with offerors and reevaluated proposals. COS at 12. The agency concluded that BTAS's ECP was unrealistic and therefore rejected its proposal as ineligible for award. Id. The agency awarded the contract to MicroTechnologies because its proposal was the lowest-priced of the acceptable proposals. Id.

On September 15, BTAS filed a protest with our Office (B-413091.3), arguing that the agency improperly evaluated its ECP, and that the agency failed to conduct meaningful discussions. On September 21, the Air Force advised our Office that it would take the following corrective action in response to BTAS's protest: "[A]mend the solicitation to more specifically describe how it will evaluate offerors' ECPs, reopen discussions with the technically acceptable offerors regarding the realism of their ECPs, request final proposal revisions, and make a new award determination in accordance with the solicitation." Notice of Corrective Action (Sept. 21, 2016) at 1. On September 23, we dismissed the protest as academic based on the agency's corrective action.

As part of the corrective action, the Air Force issued two amendments to the solicitation. As relevant here, RFP amendment No. 2 provided the following information regarding the agency's intended evaluation of ECPs:

Offerors and first-tier subcontractors shall provide an Employee Compensation Plan (ECP) [in accordance with] FAR 52.222-46. The ECP will be evaluated for realism. The total compensation plan should clearly show that proposed rates comply with the aforementioned

clause. In order to verify compliance with FAR 52.222-46, the Government will map proposed professional labor categories to an industry and/or government benchmark such as government civilian rates, similar contract labor rates, www.salary.com, other similar or relevant websites, or anything else it deems appropriate or beneficial in its evaluation of ECP realism.

RFP amend. 2 at 8.⁶

The Air Force received revised proposals from offerors, which included revised prices and ECPs. As in the prior evaluation, the agency compared the offerors' proposed burdened labor rates to those of the incumbent contractor; the agency again found that BTAS's rates were lower than the incumbent's rates. AR, Tab 35, Task Order Decision Document (TODD) at 16. The agency compared BTAS's proposed compensation for its professional labor categories to that proposed by the other three offerors with acceptable proposals, and to survey data for the local labor market from salary.com. Id. at 16-23. As discussed in detail below, the Air Force concluded that although both BTAS and MicroTechnologies proposed certain labor categories with compensation levels below those listed on salary.com, both offerors ECPs proposed overall realistic compensation. Id. at 23, 30.

BTAS's and MicroTechnologies' final revised prices were as follows.

Offeror	Price
BTAS	\$14,719,618
MicroTechnologies	\$15,699,183

Id. at 46. The agency found that both offerors submitted technically-acceptable proposals. Id. at 10. Because the agency found that BTAS's proposal was technically acceptable, had a realistic ECP, and offered the lowest price, the agency issued the order to that firm. The agency provided a debriefing to MicroTechnologies on November 6. This protest followed.⁷

⁶ The amendment also incorporated FAR § 52.222-46 into the solicitation by reference. RFP amend. 2 at 8.

⁷ The awarded value of the task order at issue exceeds \$10 million. Accordingly, at the time this protest was filed on November 14, 2016, this procurement was within our jurisdiction to hear protests related to the issuance of orders under multiple-award ID/IQ contracts that were awarded under the authority of Title 10 of the U.S. Code. 10 U.S.C. § 2304(e)(1)(B); see National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000, § 835 (amending jurisdictional threshold to \$25 million for protests of orders placed under ID/IQ contracts awarded under authority of Title 10, effective December 23, 2016); Technatomy Corp.,

(continued...)

DISCUSSION

MicroTechnologies argues that the Air Force's evaluation of the realism of BTAS's ECP was unreasonable for two primary reasons: (1) the agency did not evaluate the realism of the fringe benefits proposed by the awardee in its ECP, and (2) the agency unreasonably concluded that the total compensation identified in BTAS's ECP was realistic.⁸ For the reasons discussed below, we find no basis to sustain the protest.⁹

The evaluation of an offeror's proposal is a matter within the agency's discretion. Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9 (task order competition under FAR subpart 16.5). An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably

(...continued)

B-405130, June 14, 2011, 2011 CPD ¶ 107 at 5-6 (changes to jurisdiction will not be given retroactive effect, absent specific statutory direction).

⁸ MicroTechnologies also argues that the Air Force's evaluation of BTAS's ECP failed to recognize that BTAS's employees would not receive both the maximum salary and full benefits, but would only receive what the protester contends was a qualification or limitation on the maximum compensation. See Protester's Comments (Dec. 19, 2016) at 5-6. (citing AR, Tab 29, BTAS Revised Price Proposal, at 10). The protester first raised this argument in its December 19, 2016, comments on the agency report in response to the instant protest. This aspect of BTAS's proposal, however, was the same in the awardee's initial proposal, which was provided to the protester on June 3, 2016, in the Air Force's report on the initial protest. AR (B-413091, B-413091.2), Tab 7, BTAS Price Proposal, at 10. Because this argument was not raised within 10 days of when the protester knew or should have known of its basis, i.e., in June 2016, we dismiss it as untimely. See 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known); Lanmark Tech., Inc., B-410214.3, Mar. 20, 2015, 2015 CPD ¶ 139 at 5 n.2 (dismissing piecemeal presentation of protest arguments).

⁹ MicroTechnologies also raises other collateral arguments. Although we do not address every argument in detail, we have reviewed each issue and find no bases to sustain the protest.

based. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17.

With respect to the compensation for professional employees under FAR provision 52.222-46, the purpose of that FAR provision is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. ELS Inc., B-283236, B-283236.2, Oct. 25, 1999, 99-2 CPD ¶ 92 at 10-11. In the context of fixed-price contracts, our Office has held that this FAR provision anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding an offeror's proposed compensation. See Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Navistar Def., LLC; BAE Sys., Tactical Vehicles Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 17. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9.

Evaluation of BTAS's Proposed Fringe Benefits

MicroTechnologies argues that the Air Force's evaluation of BTAS's ECP failed to consider the realism of the awardee's proposed fringe benefits. We find no basis to sustain the protest based on this argument.

As discussed above, FAR provision 52.222-46 anticipates that the agency will perform a price realism analysis of offerors' proposed ECPs, and requires agencies to evaluate an offeror's "total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract." FAR § 52.222-46(a); ELS Inc., supra. The record here shows that the Air Force evaluated both BTAS's labor rates and fringe benefits. The award decision contained a chart detailing the hourly salary rates, hourly fringe benefits rates, and the combined salary and fringe rates proposed by BTAS, and compared these rates to the salary, fringe and combined salary and fringe rates for comparable labor categories on salary.com. AR, Tab 35, TODD, at 23. The agency found that the "[e]valuation of BTAS' proposed salary and fringe for professional labor categories identified in the table above shows the compensation proposed by BTAS is, on average, approximately [DELETED]% below those retrieved from Salary.com." Id. Notwithstanding this concern, the agency concluded that the combined labor and fringe benefits rates were realistic, overall. Id.

MicroTechnologies argues that the Air Force's evaluation was unreasonable because the agency did not separately consider the realism of the awardee's

proposed fringe benefit rates. In this regard, the protester notes that although the awardee's combined salary and fringe rates were almost identical to the salary.com combined salary and fringe rates, the awardee's fringe benefit rates were, on average, approximately [DELETED] percent lower than the salary.com rates. See Protester's Comments (Dec. 19, 2016) at 4 (citing AR, Tab 35, TODD, at 23). In effect, the protester argues that the agency's evaluation of the combined total of the awardee's salary and fringe benefits rates was improper, because the combined total had the effect of minimizing the difference between the awardee's proposed fringe benefit rates and the rates on salary.com.

Nothing in FAR provision 52.222-46 requires the agency to find that both an offeror's proposed fringe benefits and salary are, independently, realistic. Instead, the provision requires agencies to assess whether an offeror's proposed "total compensation" is realistic. FAR § 52.222-46(a). On this record, we find no basis to conclude that the Air Force's evaluation of the offerors' total compensation was unreasonable.

Evaluation of the Realism of BTAS's ECP

Next, MicroTechnologies argues that the Air Force unreasonably concluded that the proposed compensation in BTAS's ECP was realistic. The protester raises several arguments, primarily based on what the protester contends was the agency's unreasonable reliance on information from salary.com.¹⁰ We find no basis to sustain the protest based on these arguments.

MicroTechnologies argues that the Air Force failed to compare BTAS's proposed compensation to that provided by the incumbent contractor, as required by FAR provision 52.222-46(b). The protester contends that the Air Force's reliance on information from salary.com caused the agency to ignore the fact that all of BTAS's proposed compensation rates were below those provided by the incumbent.

¹⁰ As discussed above, the Air Force's evaluation relied in large part on a comparison of the offerors' total compensation (salary and fringe benefits) for their proposed professional labor categories to compensation for comparable labor categories listed on salary.com. To the extent the protester objects to the use of salary.com as a basis for comparison, the solicitation, as amended, expressly advised that the agency would conduct its evaluation in this manner. See RFP amend. 2 at 8. Any challenge to the agency's intended use of information from salary.com filed after the time for receipt of revised proposals established by RFP amendment No. 2 is untimely. See 4 C.F.R. § 21.2(a)(1) (protests challenging the terms of solicitations which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation).

The record shows, however, the Air Force compared each offerors' proposed labor rates to those provided by the incumbent, Lockheed Martin. AR, Tab 35, TODD, at 16, 25. The agency prepared a summary chart that listed BTAS's proposed burdened labor rates, which showed that the majority of those rates were below those paid by the incumbent contractor. Id. at 16. For this reason, the agency stated as follows: "Because the rates proposed by BTAS [for] fully burdened labor categories (13 of 16 total labor categories proposal) and associated rates were lower than the fully burdened labor rates paid by the current contractor for similar labor categories, the Government conducted additional analysis captured in Table 11 below for five professional labor categories (out of a total of 16 proposed labor categories)." Id. The additional analysis for the five professional labor categories included the analyses discussed above, such as comparisons to the rates proposed by other offerors and to data listed on salary.com. Id. at 17-23. On this record, we find no basis to conclude that the agency failed to consider information concerning the incumbent's compensation.

Next, MicroTechnologies argues that the Air Force did not adequately explain why it found that BTAS's proposed ECP was realistic. The Air Force identified concerns with 5 of BTAS's 10 professional labor categories, concluding that they were between [DELETED] percent and [DELETED] percent below the salary.com rates for those positions. Id. at 23. The agency also noted that the awardee's proposed total compensation rates for the professional labor categories was, on average, [DELETED] percent below the salary.com levels. Id. The agency nonetheless found that BTAS's ECP was realistic, concluding that although the awardee was "slightly below the benchmark" for compensation, this "does not lead the Government to the conclusion that BTAS will have difficulty recruiting and retaining qualified professionals to guarantee high quality performance of this task order." Id. In this regard, the agency stated that "the negative [DELETED]% average is a minimal deviation below the benchmark, as BTAS' proposed compensation, is realistic in a competitive market where the Government has determined the offeror has a sound management (staffing) plan." Id.

In addition, in the Air Force's response to the protest, the contracting officer provided a statement explaining, for both offerors, why the agency concluded that the proposed ECPs were realistic. The contracting officer noted that: (1) the offerors had two opportunities to propose revised prices following discussions with the agency which identified concerns regarding their respective compensation levels; (2) the agency's realism analysis addressed the offerors' salary and fringe benefits, but did not evaluate "profit, [general and administrative], overhead and other rates of each offeror," cost elements which the agency believed would provide the offerors flexibility "when confronted with difficulty in hiring"; (3) potential fluctuations in the labor market could make lower compensation rates "easily tenable"; and (4) "[t]his is a competitive market with four experienced offerors that should be considered to have a good idea of their projected professional employee compensation costs." AR, Tab 36, Aff. of Contracting Officer (Dec. 8, 2016), at 5, 7.

As discussed above, the depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Navistar Def., LLC; BAE Sys., Tactical Vehicles Sys. LP, supra. Additionally, even where a solicitation contemplates a price realism evaluation, there is no bar to an offeror proposing--and an agency accepting--a below-cost price. Optex Sys., Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6.

To the extent the protester argues that the Air Force could not reasonably find the awardee's ECP realistic in light of the [DELETED] percent average difference between the awardee's proposed compensation and the data listed on salary.com, the difference itself does not demonstrate that the agency's judgment was per se unreasonable. The record shows that the agency identified areas of concern where certain of the awardee's proposed labor categories were below the salary.com benchmarks, and also shows that the agency recognized that the awardee's overall ECP proposed lower average compensation rates than were listed on salary.com. Nonetheless, the agency concluded that the awardee's ECP was realistic because, for the reasons discussed above, the agency considered the difference to be "minimal." AR, Tab 35, TODD, at 23. In effect, the agency concluded that the risk of poor performance associated with the professional labor to be provided under the anticipated fixed-price contract was acceptable. The protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. See Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 8.

The protest is denied.

Susan A. Poling
General Counsel