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# Decision

**Matter of:** Dalpar Corporation

**File:** B-414285

**Date:** April 24, 2017

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## DIGEST

1. Protest challenging the agency's evaluation of awardee's proposed professional compensation plan is denied where the record shows that the plan was not unrealistic for the work proposed.
  2. Allegation that agency failed to consider fringe rates as part of professional compensation analysis is denied where the protester was not prejudiced by the alleged failure.
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## DECISION

Dalpar Corporation, a small business of Fort Walton Beach, Florida, challenges the award of a contract to Telum Corporation, a small business of Southern Pines, North Carolina, under solicitation No. FA0021-16-R-0040 issued by the Department of the Air Force for tactical air traffic control training services. Dalpar contends that the agency's professional compensation and price realism analyses were unreasonable.

We deny the protest

## BACKGROUND

On September 23, 2016, the Air Force issued request for proposals (RFP) No. FA0021-16-R-0040 for air traffic control training services for Air Force Special Operations Command units. Contracting Officer's Statement of Facts (CO's Statement) at 2. The competition was set aside in its entirety for socially and

economically disadvantaged small business concerns. Id. The RFP contemplated the award of a single fixed-price contract for a base period of 10 months followed by two 1-year options, and provided that award would be made on the basis of three factors: (1) price; (2) technical; and (3) past performance. RFP at 2, 55. The solicitation noted that award would be made to the lowest-priced technically acceptable proposal, and outlined a multi-step evaluation methodology. Id. at 53-54.

As an initial step, the solicitation provided that evaluators would calculate a total evaluated price (TEP) for each proposal, using a worksheet attached to the solicitation. Id. at 55. Of note, the worksheet required offerors to provide detailed hourly rate information for a single labor category (Air Traffic Control Instructor) at each of the three duty locations covered by the contract. In this regard, offerors were to provide a fully-burdened instructor labor rate for each location, as well as the labor rate build-up information (base labor rate, fringe benefit rate, overhead rate, general and administrative rate, and profit). See e.g. Dalpar Price Proposal at 61. The worksheet also established that a full productive work year for each instructor constituted 1,880 hours. Id.

After calculating the TEP, the evaluators were to assess each proposal's TEP for accuracy, completeness, fairness, unbalanced pricing, and reasonableness.<sup>1</sup> RFP at 55-56. The RFP further indicated that the agency would perform a professional employee compensation evaluation as provided by Federal Acquisition Regulation (FAR) provision 52.222-46 (Evaluation of Compensation for Professional Employees). Id. Following this evaluation, the RFP indicated that offerors would be ranked from lowest TEP to highest TEP, with the lowest TEP offer to be selected for further evaluation. Id. at 54.

The solicitation then provided that the lowest TEP offer would be evaluated for technical acceptability, and if any subfactor received an "unacceptable" rating, the proposal would be ineligible for award and the next lowest-priced proposal would be evaluated. Id. at 54-55. Finally, once a technically acceptable proposal was identified, that proposal would be evaluated for acceptable past performance, and if the past performance was found acceptable, award would be made to that offeror. RFP at 54-55.

The Air Force initially received four proposals, one of which was received late and therefore not considered for award. CO's Statement at 4. After an initial evaluation, the proposal identified as having the lowest TEP was eliminated as technically unacceptable, leaving only two proposals, one from Dalpar and the other from Telum. Id. Telum's TEP of \$1,953,056.50 was lower than Dalpar's TEP of \$2,029,937.30, so the agency further evaluated Telum's proposal, finding it to be technically acceptable

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<sup>1</sup> The RFP also generally indicated that the agency could reject any proposal that was evaluated as unrealistic in terms of price such that the proposal was deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program. RFP at 54.

and to have acceptable past performance. CO's Statement at 4 and Price Competition Memorandum (PCM) at 3. On November 15, the agency notified Dalpar that it intended to make award to Telum on the basis that it submitted the lowest-priced technically acceptable proposal, and provided Dalpar with a debriefing. CO's Statement at 4.

Following the debriefing, Dalpar filed an agency-level protest contending that the Air Force performed an unreasonable evaluation of Telum's proposal and did not perform meaningful professional compensation or price realism analyses. Id. at 4-5. In response, the agency notified all three timely offerors that it would reevaluate the existing price proposals submitted by each offeror. Id. at 5. As part of its reevaluation, the Air Force conducted an evaluation of price reasonableness, realism, and unbalanced pricing. Id.

Specifically, the Air Force assessed price reasonableness by comparing Telum's total price to the average total price of the offers submitted, and concluded that Telum's price was reasonable since it was approximately 1.25 percent less than the average total price of the proposals received. PCM at 5. The Air Force also analyzed Telum's base rates and indirect rates for unbalanced pricing and concluded that the rates were also within a reasonable range.<sup>2</sup> Id. at 5-6. Finally, the Air Force assessed Telum's proposed professional compensation plan by comparing Telum's proposed salary against historical pricing for instructors from the existing contract, a compensation survey from SalaryExpert.com, the independent government estimate, and the other offerors' proposed salaries for their instructors at each location identified in the RFP. PCM at 6-7. Of note, the Air Force used the TEP worksheets to derive each offeror's instructor base salary for each location by multiplying the proposed base hourly rate by 1,880 hours--the work-year hours specified on the TEP worksheet for each instructor. See PCM at 6-7 and Agency Supplemental Response at 2.

The agency's cost analyst indicated that the threshold for significantly high or low salaries would be a salary more than two standard deviations away from the average of the salary data considered. PCM at 6. Because Telum's proposed salaries were within one standard deviation, the analyst determined that the salaries represented fair and proper compensation for the professional employees under the contract, and that Telum's proposal was realistic based on Telum's management approach and understanding of the requirements of the contract. Id. at 7. Based on this analysis, the agency concluded that Telum's proposal remained the lowest-priced technically acceptable proposal and notified the offerors of its intent to make award to Telum. Id. at 10. This protest followed.

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<sup>2</sup> The base rates were within 2.10 percent to 3.78 percent less than average, while the indirect rates were between 3.23 percent above and 2.24 percent less than average. PCM at 5-6.

## DISCUSSION

Dalpar challenges the reasonableness of the agency's price realism analysis and professional compensation analysis. Specifically, Dalpar claims that the agency's price realism and professional compensation analysis was unreasonable because the agency: (1) selectively chose salary data from Dalpar's proposal which skewed the results of its compensation analysis; (2) applied an unreasonable test by selecting two standard deviations as the threshold of significance; (3) did not consider fringe rates as part of its professional compensation analysis; and (4) relied on a single blended rate for Telum and its subcontractor.<sup>3</sup> See Protester's Comments on Agency Report.

### Selective Use of Salary Data

Dalpar contends that the agency's salary comparison analysis was unreasonable because the agency used incorrect salary data from its proposal as the basis of comparison. Protester's Supplemental Comments at 4-5. Specifically, Dalpar contends that the agency used salary information it derived for Dalpar's instructors by multiplying the base labor rate provided in Dalpar's TEP worksheets by 1,880 hours. According to Dalpar, the agency should have instead used the higher annual salary outlined in the narrative portion of its proposal. Id.

The agency responds by noting that the solicitation informed offerors that the Air Force would use the TEP worksheets for comparison purposes, and also notified offerors that the agency would use 1,880 hours as the total hours for a full year of productive labor for the instructors. Agency Supplemental Response at 2. On that basis, the Air Force contends that it is immaterial that Dalpar provided additional, albeit higher, and also inconsistent, salary information in its narrative, as the RFP was clear that the price worksheets would be used for price analysis. Id.

The evaluation of an offeror's proposal is a matter within the agency's discretion. See National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5; Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. 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 based. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2009, 2009 CPD ¶ 154 at 17.

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<sup>3</sup> Dalpar's protest included several additional arguments. Although they are not specifically addressed in this decision, we considered them and conclude that they do not provide a basis on which to sustain the protest.

In this case, as required by the solicitation, the record reflects that Dalpar's TEP worksheets included base rates, fringe rates, overhead rates, general and administrative expense rates, and profit, for the instructors based on an 1,880 hour work year. Dalpar Price Proposal at 61. When summed, they matched Dalpar's fully-burdened instructor hourly labor rates. Since the base rate information reflected the salary paid directly to the employee, the agency reasonably used this information as its basis for comparing the professional compensation proposed by the offerors.<sup>4</sup> To the extent that Dalpar may have included other salary information in the narrative section of its proposal, the agency properly focused on the price information set forth in Dalpar's price worksheets where the solicitation established that the worksheets were to be used to calculate the TEP for each offeror and to conduct the agency's price evaluation. Thus, we have no basis to question the agency's use of the salary information from Dalpar's price worksheets rather than the salary information in the narrative section of Dalpar's proposal.

### Two Standard Deviations

Dalpar further contends that the agency applied an unreasonable test in assessing whether Telum's proposed salaries were realistic. Specifically, Dalpar contends that the agency's test for realism--salaries within two standard deviations from the average--could result in salaries \$22,000 lower than the average salary of \$77,913.91, an approximately 28 percent salary reduction which would result in unreasonable risk of turnover. Protester's Supplemental Comments at 8.

As a general matter, the purpose of a review of compensation for professional employees under FAR provision 52.222-46 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 a fixed-price contract, such as this one, our Office has explained 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 to assess performance risks stemming from

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<sup>4</sup> Dalpar maintains that the salary information in its narrative is the actual salary that the employees will receive and that the base salary calculated by the agency is incorrect. The difference, according to Dalpar, stems from the fact that the narrative salary information is not calculated based on an 1,880 hour work year. If, as Dalpar suggests, the annual salary outlined in the narrative section of its proposal was not computed using the same work year as the base hourly rate in its proposal, then the salary in the narrative is inconsistent with its detailed pricing information--that is to say--either the annual salary in the narrative, or the composition of Dalpar's proposed annual prices, is inaccurate. Regardless, as noted above, the agency reasonably based its evaluation on the detailed price information contained in Dalpar's price worksheets.

professional compensation that is inadequate or unrealistically low. 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.

While Dalpar has challenged whether it is reasonable for the agency to use a salary two standard deviations from the average to determine if proposed salaries were realistic, we do not reach that question as the facts of this case do not require us to do so. In this case, the agency's analysis showed that the awardee's proposed salaries were less than one standard deviation from the average salaries for each location<sup>5</sup> (within 13 percent of the average). Additionally, we note that Telum's salaries were within 2 percent of Dalpar's own proposed salaries. See PCM at 8. On this record, we cannot conclude that the 13 percent difference from the average shows that Telum's rates were per se too low, and the protester's disagreement with the agency's judgment that the rates were realistic, without more, provides no basis to sustain the protest.<sup>6</sup> See Apptis, Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 10-11 (protest of professional compensation analysis denied where differences in professional compensation were not significant enough to be unreasonable per se).

#### Indirect Rates

Dalpar additionally contends that the agency failed to evaluate fringe rates as part of its assessment of Telum's professional compensation plan, and instead evaluated fringe rates only as part of a more general assessment of indirect rates for unbalanced pricing. Protester's Supplemental Comments at 1-3. This is important, Dalpar argues, because fringe benefits are an important component of professional compensation. Id. While

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<sup>5</sup> The average salary was computed by averaging historical pricing from the existing contract, a compensation survey from SalaryExpert.com, the independent government estimate, and all offerors' proposed salaries.

<sup>6</sup> Dalpar further argues, without providing documentary evidence, that the agency relied on an inaccurate number for one of the comparison points--the salary under the current contract. Protester's Supplemental Comments at 4-5. Even assuming that to be true, the salary that Dalpar alleges the agency should have considered for the current contract (\$76,219.52) is lower than the salary the agency actually used as a comparison point (\$80,539.20). See Protester's Supplemental Comments at 4-5 and Dalpar Price Proposal at 68. Therefore, even if Dalpar were correct, the alternate number would have the effect of making the average salary used in the comparison lower, which would render Telum's proposed salary even closer to the average, and hence more likely to be realistic, not less.

the indirect rates include fringe rates, the indirect rates also include other components that are not part of professional compensation. Id. at 2. An assessment of indirect rates as a whole, therefore, does not represent an assessment of fringe benefits as compensation. Id.

The provision at section 52.222-46 of the FAR, defines compensation as “salaries and fringe benefits,” and the professional compensation analysis contemplated by the FAR provision encompasses both elements of compensation. See FAR § 52.222-46(a). Where our Office has specifically addressed these issues, we have explained that, where the agency has requested unburdened rates in a solicitation, the agency may not consider burdened rates alone, but must also consider salary and fringe rate information. See, e.g., MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 12.

While the record shows that the agency assessed offerors’ indirect rates as part of its unbalanced pricing and price reasonableness evaluations, it is not apparent that the agency specifically assessed fringe benefit rates as part of its assessment of Telum’s professional compensation. See PCM at 5-7. We note, however, that the price competition memorandum and the offerors’ TEP worksheets, include a breakout of the composition of the indirect rates, and that Telum’s employee benefits are higher than those proposed by Dalpar in terms of the percentage of the fringe rate, and in terms of actual dollar amounts. Compare PCM at 6 with PCM at 8. As noted above, the purpose of a professional compensation evaluation is to assess performance risks stemming from professional compensation that is inadequate or unrealistically low. See FAR § 52.222-46(c). Thus, to the extent Dalpar is correct that the agency did not specifically assess the fringe rates as part of its professional compensation analysis, Dalpar has not shown any prejudice in this regard where its own fringe benefits are less substantial than those proposed by Telum.<sup>7</sup> Prejudice is an element of every viable protest, and a protester must demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving award. See Piquette & Howard Elec. Serv., Inc., B-408435.3, Dec. 16, 2013, 2014 CPD ¶ 8 at 10; Supreme Foodservice GmbH, B-405400.3, et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14.

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<sup>7</sup> Dalpar attempts to rebut this point by contending that Telum impermissibly included several cost elements in its fringe rate that should instead have been included in the overhead or administrative rates. Protester’s Comments on the Agency Report at 7-8. As the agency notes, however, including the identified cost elements in the fringe rate is consistent with ordinary practice. See Agency Supplemental Response at 3 citing Defense Acquisition University, Contract Pricing Reference Guides, Ch. 9, Analyzing Indirect Costs (2016), and Office of Secretary of Defense, Understanding Cost Volume Terms, available at <http://www.acq.osd.mil/osbp/sbir/docs/costvolumeterms.pdf>. This point is supported by the fact that Dalpar’s own proposal included all but one of these allegedly impermissible cost elements in fringe rather than overhead. See Agency Supplemental Response at 3; Dalpar Price Proposal at 68.

## Blended Rate

Finally, Dalpar contends that the agency could not have reasonably evaluated Telum's professional compensation as Telum's TEP worksheet provided only a single set of blended rates derived from its own rates and its subcontractor's proprietary rates. Protester's Comments on the Agency Report at 6-7. This blended rate, Dalpar argues, could allow Telum to obscure significant overhead by blending its rates with the potentially higher salaries paid by its subcontractor, although Dalpar provides no evidence that this was the case. Id. In response, the agency contends that the solicitation did not require offerors to separately price prime and subcontractor employees, and that Dalpar's suggestions that Telum should have been required to do so are in effect an untimely protest of the terms of the solicitation. Agency Supplemental Response at 4.

As noted above, the evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5; Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. We will not substitute our judgment for that of the agency where the agency's evaluation is reasonable and consistent with the solicitation criteria and applicable procurement statutes and regulations. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17.

In this case, the solicitation required offerors to include a total compensation plan setting forth the salaries and fringe benefits proposed "for the professional employees who will work under the contract." RFP at 51. Furthermore, as noted above, the RFP required offerors to complete a price proposal worksheet, which required price information to be broken down by location and rate composition, but did not require salary and fringe benefit information separately for each individual employee, nor did it require any level of specificity with regard to subcontractor or prime employees. Telum's price proposal provides a blended salary and fringe benefit rate for all employees under the contract.<sup>8</sup> See Telum Price Proposal at 18-20. Dalpar's speculation that Telum could have concealed overhead in this manner is unpersuasive as there is no evidence supporting such a conclusion and a greater level of specificity was not required by the solicitation. Therefore we find no basis to question the reasonableness of the agency's reliance on the blended rate in Telum's price proposal.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>8</sup> Telum's price proposal included a total of five full-time equivalent employees, two of which would be provided by its subcontractor. Telum's Price Proposal at 16