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Decision

Matter of: DPRA, Inc.

File: B-421592

Date: July 17, 2023

Ronald Perlman, Esq., Richard Ariel, Esq., and Sean Belanger, Esq., Holland & Knight LLP, for the protester.

Olivia L. Lynch, Esq., and Issac D. Schabes, Esq., Crowell & Moring LLP, for Netrist Solutions, LLC, the intervenor.

Colonel Frank Yoon, Siobhan K. Donahue, Esq., Catherine J. McSwain, Esq., and Sean M. Hannaway, Esq., Department of the Air Force, for the agency.

Kasia Dourney, Esq., Alexa Stechschulte, and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of vendors' professional employee compensation plans is denied where the record demonstrates that the agency's evaluation was reasonable, consistent with the solicitation, and in accordance with Federal Acquisition Regulation provision 52.222-46.

2. Protest challenging the agency's best-value determination is denied where the agency reasonably concluded that the protester's slightly better technical quotation did not warrant a significantly higher price premium, and therefore reasonably made award to the lower-priced vendor.

DECISION

DPRA, Inc., a small business of Knoxville, Tennessee, protests the issuance of a task order to Netrist Solutions, LLC, of Charleston, South Carolina, under request for quotations (RFQ) No. FA8730-23-Q-B004, issued by the Department of the Air Force for consolidated air mobility planning system (CAMPS) sustainment, operations and maintenance services. The protester challenges the agency's evaluation of quotations and the resulting award decision.

We deny the protest.

BACKGROUND

On December 27, 2022, the agency issued the RFQ, seeking quotations for sustainment, operations and maintenance services of CAMPS, which is a Mobility Air Forces (MAF) Command and Control (C2) program “that provides seamless airlift and tanker planning, scheduling, and analysis during peacetime, crisis, contingency and wartime operations.” Contracting Officer’s Statement (COS) at 2. The solicitation was issued as a small business set-aside, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to vendors holding General Services Administration multiple award schedule contracts, special item number 5415S, for information technology professional services. Agency Report (AR), Tab 4a, RFQ at 1-2. The RFQ anticipated issuance of a single time-and-materials (T&M) task order, on a best-value tradeoff basis, for a base year and four 1-year option periods.¹ RFQ at 1-2.

Vendors were advised that the quotations would be evaluated on the basis of two factors: technical and price. AR, Tab 7c, RFQ Evaluation Criteria at 5. The technical factor comprised three subfactors: (1) functional support desk; (2) MAF C2 knowledge; and (3) parallel operations and capability fielding. *Id.* at 5-6. MAF C2 knowledge was the most important subfactor, followed by the two remaining subfactors, which were each of equal importance.² For purposes of award, the technical subfactors, when combined, were significantly more important than price; price was, however, to “contribute substantially to the selection decision.” *Id.* at 5.

The RFQ advised that the agency would employ a two-step evaluation approach. *Id.* at 4. In step 1, the agency would evaluate vendors’ written submissions detailing their functional support desk approaches to two sample problem scenarios, *i.e.*, the functional support desk subfactor. *Id.* at 4-5. Following the agency’s evaluation of the step 1 submissions, the Air Force would invite the four or five vendors determined to be the most advantageous to the government to continue to step 2. *Id.* at 5. In step 2, vendors would submit price quotations, and participate in oral presentations to demonstrate their knowledge and expertise of MAF C2, and parallel operations and capability fielding, *i.e.*, the other two technical subfactors. *Id.*

¹ The record reflects that some of the work included in the instant requirement is currently performed by DPRA, on a fixed-price contract awarded in 2018. COS at 3. The agency explains that the scope of the current CAMPS requirement includes a few new elements, for example, cloud sustainment support and the implementation of processes and procedures for development, security, and operations software construction methodology. *Id.* at 2-3. Because the new elements could not be well-defined at the time of the development of this solicitation, the agency determined that the instant requirement would be procured on a T&M basis. AR, Tab 22, Determinations & Findings at 1.

² The agency was to assign each of the three subfactors a technical rating (of excellent, good, acceptable, marginal, or unacceptable), and a technical risk assessment (of low, moderate, high, or unacceptable). AR, Tab 7c, RFQ Evaluation Criteria at 9.

Relevant here, the solicitation advised that the agency would evaluate the realism of vendors' professional employee compensation plans, in accordance with FAR provision 52.222-46. *Id.* at 7. For the plan to be realistic, it was to "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." *Id.*; see also FAR provision 52.222-46(b). Vendors were to submit compensation plans "setting forth an average unburdened direct labor rate and fringe benefits provided for the professional employees" for the prime contractor and all subcontractors. AR, Tab 7b, RFQ Instructions at 15; see AR, Tab 5d, Price Formats Worksheets, Compensation Plan Tab. The solicitation also provided that the agency would evaluate the price reasonableness, calculate the total evaluated price, and determine whether the quoted prices were materially unbalanced. AR, Tab 7c, RFQ Evaluation Criteria at 6-7.

The agency received ten quotations by the closing date of January 18, 2023. COS at 13. After the evaluation of quotations, the agency concluded that three vendors, including DPRA and Netrist, were the most advantageous to the government, and invited them to participate in step 2 of the evaluation. AR, Tab 20, Decision Document (DD) at 2-3.

Following interchanges with vendors, oral presentations, and the evaluation of price quotations, the relevant evaluation results and risk rating assessments were as follows:

	DPRA	Netrist
Technical		
Subfactor 1: Functional Support Desk	Excellent	Good
Risk Assessment	Low	Low
Subfactor 2: MAF C2 Knowledge	Excellent	Good
Risk Assessment	Low	Low
Subfactor 3: Parallel Operations & Capability Fielding	Good	Acceptable
Risk Assessment	Low	Low
Price		
Price Reasonableness	Yes	Yes
Compensation of Professional Employees	Realistic	Realistic
Unbalanced Pricing	No	No
Total Evaluated Price	\$32,759,340	\$21,390,010

AR, Tab 20, DD at 5-6.

The source selection authority (SSA) agreed with the findings of the technical and price evaluators. *Id.* at 7. The SSA noted that Netrist had the lowest price of \$21,390,010, technical ratings of good and acceptable for all three subfactors, and a low risk assessment. *Id.* In addition, the SSA found that Netrist provided "an unmatched

depiction of CAMPS' architecture, to include CAMPS' future [c]loud footprint." *Id.* The SSA also observed that Netrist's "level of detail . . . demonstrated [its] superior knowledge and expertise" concerning CAMPS' current on-premises environment, as well as the future cloud environment. *Id.* While DPRA and a third vendor also demonstrated "knowledge of the relationship between CAMPS' [on-premises] and cloud" environments, the SSA documented that "Netrist's response was [superior] on this matter." *Id.* Further, the SSA stated that Netrist was "the only vendor to provide multiple solutions for each of the problem scenario[s], demonstrating a wide array of expertise through presenting multiple methods to meet the [g]overnment's requirements." *Id.*

The SSA explained that while DPRA's technical quotation received higher ratings, its proposed price was 44.9 percent higher than Netrist's price; that price premium, according to the SSA, was "not representative of the knowledge and expertise differential between DPRA and Netrist." *Id.* at 7-8. Concluding that DPRA's quotation was "not sufficiently more advantageous to justify" the associated price premium, the SSA found that Netrist's quotation represented the best value to the government, and directed the contract award to that company. *Id.* at 8.

After receiving a notice of award and a brief explanation of award, DPRA timely filed this protest with our Office.

DISCUSSION

The protester challenges several aspects of the agency's evaluation of quotations and award decision. First, DPRA asserts that the Air Force misevaluated quotations under the technical subfactors and improperly assessed Netrist as presenting low risk. Protest at 2-4. The protester also alleges that the agency failed to meaningfully evaluate total compensation plans under FAR provision 52.222-46, conducted a flawed price analysis, failed to consider DPRA's "exceptional" past performance, and issued an improper best-value decision. *Id.* at 4-9; Comments at 2-6.

We have reviewed each of the protester's allegations, and although we do not address all of the protester's arguments, we conclude that none provides us with a basis to sustain the protest. Prior to discussing DPRA's principal contentions below, we dismiss a number of challenges for either failing to state valid bases of protest or because they are untimely.

Dismissed Protest Grounds

The protester contends that the agency misevaluated technical quotations by assessing the same low risk rating to Netrist--"a company with no experience [with] the CAMPS software"--as to DPRA, "that has worked on the CAMPS software for many years." Protest at 2. The protester also complains that the Air Force failed to consider DPRA's excellent past performance. *Id.* at 3. Additionally, the protester challenges the agency's price evaluation methodology as flawed. *Id.* at 4-7. The agency requests dismissal of

these allegations, arguing that they lack sufficient factual or legal support, are speculative, or are untimely. Req. for Dismissal at 3-6. On the record before us, we agree.³

First, we dismiss, for failing to state a valid basis of protest, DPRA's assertion that the Air Force improperly assessed Netrist's risk rating and failed to consider DPRA's excellent past performance. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4) and (f). Where a protester relies on bare assertion, without further supporting details or evidence, our Office will find that the protest ground essentially amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest. *enrGies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 6.

Here, the protester speculates that it is "literally impossible" for the awardee, which has "never seen or touched [CAMPS] previously," to have been assessed the same level of risk as DPRA, the incumbent contractor, "with over 45 years of CAMPS experience." Protest at 2, 5. DPRA does not identify, however, any concrete facts demonstrating that Netrist's quotation did not merit its low risk rating, but rather relies on conjecture and speculation. Accordingly, we dismiss this protest ground as legally insufficient. See *INNOVIM, LLC*, B-419912, B-419912.2, Sept. 21, 2021, 2021 CPD ¶ 331 at 6. Moreover, we find that DPRA's allegation that the agency improperly disregarded its past performance also fails to articulate sufficient legal and factual grounds for protest because, as discussed above, past performance was not an evaluation factor in this procurement. For that reason, we dismiss this protest ground as well.

To the extent the protester contends that past performance should have been considered as one of the evaluation factors in "a 'best-value' competition," this assertion is untimely. Protest at 3. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotations be filed before that time. 4 C.F.R. § 21.2(a)(1); see *AmaTerra Env'tl. Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. Here, the protester waited until after award before it filed its challenge to the terms of the solicitation. As such, we dismiss this allegation as untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of quotations. *Quasar Glob. Techs., Inc.*, B-418007, Oct. 30, 2019, 2019 CPD ¶ 369 at 5.

³ On May 2, 2023, we notified the parties that we intended to dismiss a majority of the initial protest allegations for either failing to state a valid basis of protest, or because they were untimely. See Notice of Partial Dismissal at 1. Accordingly, we asked the agency to only respond in its agency report to the protester's challenges to the evaluation of professional compensation plans and the agency's best-value tradeoff decision. *Id.*

Similarly, DPRA only now alleges that the agency's price evaluation methodology was flawed because it used a total evaluated price/best estimated quantity model which, according to DPRA, does not allow for a "like-for-like comparison for price." Protest at 5. The protester specifically alleges that the total evaluated price/best estimated quantity model does not consider the fact that DPRA, the incumbent firm, would require "fewer resources to perform the same work and less hours." *Id.* at 7.

The RFQ, however, provided a clear description of the total evaluated price/best estimated quantity evaluation methodology that the Air Force intended to use in this procurement. AR, Tab 7c, RFQ Evaluation Criteria at 7; AR, Tab 7b, RFQ Instructions at 14-15. Because the protester elected not to challenge this methodology before the time for receipt of quotations, this allegation is now untimely, and we dismiss it.

Professional Employee Compensation Plan Evaluation

Turning to the remaining allegations, DPRA contends that the agency unreasonably evaluated professional compensation as required by FAR provision 52.222-46. In this regard, the protester asserts that the agency failed to properly assess the realism of the awardee's proposed total compensation plan, and failed to consider fringe benefits as part of vendors' proposed plan evaluations, Protest at 4-5, "limit[ing] its evaluation to unburdened direct labor rates." Comments at 3. DPRA also complains that the Air Force failed to compare Netrist's rates to the incumbent's rates, *i.e.*, DPRA's rates, on the predecessor contract. *Id.*

The agency counters that its evaluation of professional compensation plans was proper. Memorandum of Law (MOL) at 6-9; COS at 16-18. The Air Force explains that it evaluated both proposed fringe benefits and average unburdened labor rates, and reasonably determined that Netrist's plan was realistic. COS at 17-18. The agency acknowledges that it was not able to compare the realism of incumbent rates to the rates proposed by Netrist but explains that the incumbent contract is a fixed-price requirement, "with some but not all the same requirements" as the current T&M contract, and, as such, "[t]here were no incumbent rates to compare."⁴ MOL at 8; COS at 16. Nevertheless, the agency maintains that it compared each vendor's average unburdened direct labor rate to an average unburdened direct labor rate developed based on a composite federal employee compensation profile found on the website for the Office of Personnel Management. MOL at 9; COS at 16 (*citing* the federal employee compensation plan, available at <https://www.opm.gov/policydata-oversight/pay-leave/pay-administration/fact-sheets/federal-employee-compensation-package/> (last visited on July 6, 2023)). The Air Force also states that it compared the elements of each vendor's benefits package to the equivalent package offered to federal employees. MOL at 9; COS at 16-18.

⁴ In this regard, the agency explains that labor rates in a T&M contract include "wages, overhead, general and administrative expenses, and profit." MOL at 8 (*citing* FAR 16.601(b)(1)).

We see no basis to find the agency's evaluation unreasonable. The purpose of FAR provision 52.222-46 is to evaluate whether vendors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether vendors understand the nature of the work to be performed. *Obsidian Sols. Grp., LLC*, B-416343, B-416343.3, Aug. 8, 2018, 2018 CPD ¶ 274 at 7. The provision requires that the agency evaluate a vendor's total compensation plan (salaries and fringe benefits) by considering its impact on recruiting and retention, its realism, and its consistency with a total plan for compensation. FAR provision 52.222-46(a).

Our Office has explained that if an agency resolicits a requirement in a follow-on procurement, FAR provision 52.222-46(b) requires the agency to compare the awardee's proposed professional compensation to the incumbent contractor's. *SURVICE Eng'g Co., LLC*, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 5-6. Where, however, "an agency does not have access to incumbent compensation information, it may use other reasonable means of analyzing proposed total compensation plans." *Octo Consulting Grp., Inc.*, B-420988, B-420988.2, Nov. 30, 2022, 2023 CPD ¶ 2 at 10 n.4. In this context, we found it reasonable for an agency to use "compensation levels developed based on market information," *id.*, or "the average [general schedule] equivalent rates and average offeror rates."⁵ *Obsidian Sols. Grp., LLC, supra* at 9. We also found it unobjectionable for an agency to use an agency-created professional employee compensation plan baseline created using market survey data of median base salaries and total employee compensation received by employees with the requisite experience, for the pertinent geographic areas. See *Systems Implementers, Inc.; Transcend Tech. Sys., LLC*, B-418963.5 *et al.*, June 1, 2022, 2022 CPD ¶ 138 at 23.

Here, the record reflects that the agency conducted an evaluation that was reasonable, using federal employee compensation plan information as a benchmark for its analysis under FAR provision 52.222-46. In this regard, having concluded that incumbent rates were unavailable, the Air Force compared the unburdened direct labor rate submitted by each vendor, and its subcontractors, to a composite federal employee compensation plan baseline developed using the GS pay rates for the Boston area, and compared vendors' fringe benefits packages to the federal employee compensation package. See AR, Tab 17, Netrist's Professional Compensation Plan (identifying the \$48.19 as the "[a]verage of GS 09-14 rates for the Boston location").

Specifically with respect to Netrist, the agency states that it compared the awardee's professional compensation plan, as well as the plans submitted by its subcontractors, [DELETED] and [DELETED], to the above composite direct labor rate and to the fringe "components" and "benefits" provided in the federal employee compensation package. AR, Tab 19, Netrist's Price Analysis at 3. Based on that analysis, the Air Force

⁵ The general schedule (GS) pay scale is the pay scale used to determine the salaries of the majority of federal civilian employees.

concluded that the three professional compensation plans “reflect a clear understanding of work to be performed, indicate[] the capability to obtain and keep suitably qualified personnel to meet mission objectives” and are “realistic.” *Id.*

With respect to the realism analysis, Netrist’s \$[DELETED] average unburdened direct labor rate and the rates of its subcontractors (\$[DELETED] and \$[DELETED], respectively) all exceeded the Boston-area composite GS rate of \$48.19 that the Air Force used as its benchmark, and thus were considered realistic for the work to be performed. *Id.*; COS at 16-18. The agency also observed that the Netrist team’s average unburdened direct labor rates were higher than DPRA’s offered average unburdened direct labor rate of \$[DELETED]. AR, Tab 15, DPRA’s Price Analysis at 1; COS at 17.

Despite DPRA’s contentions to the contrary, the record also shows that the agency did consider the awardee’s proposed fringe benefits as part of the total compensation plan evaluation. As an initial matter, our Office has previously found that nothing in FAR provision 52.222-46 requires an agency to find that both a vendor’s proposed fringe benefits and salary are independently realistic; rather, the provision requires that the agency consider both salary and fringe benefit information, as a whole, to determine whether the total compensation plan is realistic. See *Criterion Sys., Inc.*, B-419749 *et al.*, July 21, 2021, 2021 CPD ¶ 261 at 11.

Here, the agency evaluated Netrist’s proposed fringe benefits by conducting a comparative analysis between the fringe benefits offered by the Netrist team and the fringe benefits offered to federal employees. COS at 16-17; AR, Tab 17, Netrist’s Professional Compensation Plan ; AR, Tab 18, [DELETED] and [DELETED] Professional Compensation Plans; AR, Tab 19, Netrist’s Price Analysis at 3. The Air Force found the plans “comparable” and explained that “there were no outliers in the proposed compensation plans” with respect to the offered benefits. COS at 17; see AR, Tab 17, Netrist’s Professional Compensation Plan; AR Tab 18, [DELETED] and [DELETED] Professional Compensation Plans. The agency also compared the benefit levels offered by the Netrist team to those offered by DPRA, and similarly found them comparable. COS at 17.

We find that the protester’s assertions with respect to the agency’s allegedly improper evaluation of fringe benefits are not supported by the record. For example, the protester alleges that the Air Force failed to “recognize[] that Netrist’s compensation plan makes it impossible to hire and retain an adequate workforce” because Netrist’s proposed compensation plan does not include a tuition reimbursement benefit while DPRA’s plan offered a “generous” tuition reimbursement. Comments at 4. However, our review of both plans reveals that Netrist actually proposed a more robust tuition reimbursement benefit than DPRA, offering a reimbursement in the amount of “[DELETED]/Year,” while DPRA offered a “[DELETED]/yr. graduate” but only “[DELETED]/yr. undergraduate” benefit. Compare AR, Tab 17, Netrist’s Professional Compensation Plan *with* AR, Tab 15, DPRA’s Professional Compensation Plan.

In addition to mischaracterizing the record, the protester has not meaningfully explained why a comparison to the federal benefit package conducted by the agency was unreasonable. Comments at 4. Similarly, DPRA failed to assert any specific facts showing that the fringe benefits proposed by Netrist will negatively impact its ability to recruit and keep qualified personnel or otherwise jeopardize contract performance.

On this record, we find no basis to sustain the protester's allegation that the agency failed to evaluate vendors' proposed fringe benefits, or that it otherwise misevaluated the professional employee compensation plans. Accordingly, we find that the agency's evaluation of professional employee compensation plans was reasonable, consistent with the solicitation, and in accordance with Federal Acquisition Regulation provision 52.222-46. DPRA's challenge to that evaluation is denied.

Best-Value Tradeoff Decision

Finally, the protester argues that the Air Force's best-value determination was flawed because it failed to appreciate DPRA's evaluated superiority under the most important factor, the technical factor, and because it contained factual errors. Comments at 4-6. The Air Force counters that the record demonstrates that it properly considered the merits and price of the competing quotations and sufficiently documented why DPRA's quotation did not represent the best value to the government. MOL at 9-12.

In best-value procurements, source selection officials have broad discretion in making price and technical tradeoff decisions. *Appsential, LLC*, B-419046.2, *et al.*, Jan. 22, 2021, 2021 CPD ¶ 63 at 16. Even where price is the least important factor, an agency may properly select a lower-priced, lower-rated quotation where the source selection official reasonably concludes that the price premium associated with the higher-rated, higher-priced quotation is not justified. *Id.*; *Enhanced Veterans Solutions, Inc.*, B-414189.2, July 25, 2017, 2017 CPD ¶ 246 at 6. In making a tradeoff analysis, the agency need not include a detailed comparison of quotations under each evaluation factor; documentation is adequate where the agency shows that it was aware of the relative merits and price of the competing quotations and that the source selection was reasonably based. *Appsential, LLC, supra* at 16.

Here, the record establishes that in making his best-value tradeoff determination, the SSA reviewed the underlying evaluation results for each technical subfactor and considered the qualitative value of each technical quotation. AR, Tab 20, DD at 7-8. The SSA acknowledged that DPRA was assigned higher technical ratings than Netrist for all of the subfactors but noted that both Netrist and DPRA were evaluated as low risk on all of the subfactors. *Id.* The SSA also considered the substantive technical advantages of both quotations. For example, the SSA documented DPRA's demonstrated knowledge of CAMPS' on-premises and cloud instances, its inclusion of "CAMPS' characteristics and unique attributes," and its "detailed" solution to the problem scenarios. *Id.* at 7. In considering Netrist's technical strengths, the SSA noted Netrist's "unmatched depiction" of CAMPS's architecture, demonstrated knowledge of

CAMPS' on-premises and cloud instances, and inclusion of multiple solutions for each problem scenario. *Id.*

While recognizing certain DPRA strengths, the SSA noted that its price was 44.99 percent higher than Netrist's price. *Id.* at 7. In this regard, explaining that Netrist's technical approach also presented strengths not identified in DPRA's quotation, the SSA concluded that "DPRA's submission [was] not sufficiently more advantageous to justify the price premium of 44.99 [percent]." *Id.* at 8.

We see no basis to disturb the agency's conclusions in this regard. While DPRA asserts that certain underlying technical evaluation conclusions contained factual errors, the record does not support the protester's allegations.

For example, DPRA speculates that Netrist could not have demonstrated superior knowledge with respect to on-premises and cloud instances because DPRA was evaluated as excellent under the MAF C2 knowledge subfactor, while Netrist was evaluated only as good for that subfactor. See Comments at 6. We find that DPRA's reliance on conjecture and speculation, however, without more, is not a basis to question the agency's findings here. In this regard, we note that the MAF C2 knowledge subfactor comprised many elements, of which knowledge of cloud and on-premises instances was only one. We further note that the record demonstrates that DPRA's quotation contained multiple other attributes that contributed to DPRA's excellent rating under this subfactor, including, *e.g.*, its seven step approach to creating a sample data set. AR, Tab 14, DPRA Consensus Evaluation Document at 4. Accordingly, we are not persuaded by the protester's contention that DPRA's excellent rating under the MAF C2 knowledge subfactor demonstrates that the agency unreasonably concluded that Netrist possesses a superior level of knowledge of cloud and on-premises instances.

In sum, we find that the Air Force's best-value decision was reasonable, sufficiently documented, and does not provide us with a basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel