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# Decision

**Matter of:** OBXtek, Inc.

**File:** B-422057; B-422057.2

**Date:** January 2, 2024

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Erika Whelan Retta, Esq., and Alissa J. Schrider, Esq., Department of the Air Force, for the agency.

Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest of the agency's evaluation of the protester's professional employee compensation plan is denied where the agency's evaluation was reasonable and consistent with regulation and the terms of the solicitation.

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## DECISION

OBXtek, Inc., of McLean, Virginia, protests the issuance of a task order to Valiant Global Defense Services, Inc., of San Diego, California, under fair opportunity proposal request (FOPR) No. FA521523R0002 by the Department of the Air Force for pilot instruction and related services at several domestic and overseas locations. The protester principally alleges that the agency erred in its evaluation of the protester's professional employee compensation plan.

We deny the protest.

## BACKGROUND

On February 2, 2023, the agency issued the FOPR to all concerns eligible under pool 1 of the General Services Administration (GSA) One Acquisition Solution for Integrated Services (OASIS) contract. Memorandum of Law (MOL) at 2. The solicitation sought pilot instruction and academic support services at six installations: Joint Base Elmendorf Richardson, Alaska; Joint Base Pearl Harbor Hickam, Hawaii; Kadena and

Misawa Air Bases, Japan; and Kunsan and Osan Air Bases, Republic of Korea. *Id.* The solicitation anticipated the award of a single fixed-price task order with a 12-month base period, four 1-year option periods, and a one-year incentive option period. *Id.*

The FOPR further explained that award would be made on the basis of a best-value tradeoff between technical and price, which were of equal importance. Agency Report (AR), Tab 11, FOPR attach. 7, Evaluation Criteria at 1. The technical factor was composed of three subfactors: (1) staffing plan; (2) hiring and retention plan; and (3) corporate experience. *Id.* Relevant to this protest, the solicitation informed offerors that the agency would evaluate proposed compensation plans in accordance with Federal Acquisition Regulation (FAR) provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* at 7. The solicitation specifically instructed offerors to submit their compensation plans in two parts: a compensation plan narrative and a compensation plan rate template identifying hourly salaries and fringe rates. AR, Tab 9, FOPR attach. 6, Instructions to Offerors at 9. The FOPR warned offerors that “[f]ailure to demonstrate a realistic [p]rofessional [c]ompensation [p]lan may render a proposal ineligible for award on the basis that the Offeror does not understand the requirement or proposed unrealistically low professional compensation.” AR, Tab 11, FOPR attach. 7, Evaluation Criteria at 7.

The agency received six proposals, including from OBXtek and Valiant. MOL at 3. As part of its evaluation of proposals, the agency assessed both OBXtek’s and Valiant’s compensation plans and initially concluded that OBXtek’s proposed compensation was either low or significantly low when compared to the incumbent compensation at each location. *Id.* at 4. The agency issued an interchange notice to OBXtek offering it the opportunity to demonstrate how its proposed compensation plan would allow OBXtek to maintain “program continuity[,] uninterrupted high-quality work, and availability of competent professional service employees.” AR, Tab 31, OBXtek Interchange Notice at 3. In response OBXtek submitted a revised compensation plan narrative and revised compensation rates. MOL at 4.

The agency evaluated OBXtek’s revised compensation plan and concluded that OBXtek’s proposed total compensation was still generally lower than the incumbent compensation at all locations, and unrealistically low at three of the six locations to be covered by the task order (Kadena, Misawa, and Kunsan). *Id.* at 4-10. For example, at one location OBXtek proposed total compensation that was more than twenty percent lower than the incumbent total compensation for all professional positions. *Id.* The evaluators ultimately concluded that OBXtek’s compensation plan was unrealistic overall, and OBXtek’s proposal was excluded from further consideration for award. *Id.*

Subsequently, the agency conducted a best-value tradeoff between Valiant and two other offerors not party to this protest, ultimately determining that Valiant’s proposal offered the best value. AR, Tab 46, Fair Opportunity Decision Document (FODD) at 44-45. The agency made award to Valiant at a total proposed price of \$108,669,155

on September 15, 2023.<sup>1</sup> MOL at 18. OBXtek subsequently received a debriefing, and this protest followed.

## DISCUSSION

OBXtek principally argues that the agency erred in its evaluation of OBXtek's compensation plan.<sup>2</sup> Protest at 7-10; Comments and Supp. Protest at 2-5. The protester raises two related arguments. First, OBXtek argues that the agency improperly ignored additional compensation described in OBXtek's revised compensation plan narrative. Comments and Supp. Protest at 2-5. The protester alleges that, if the agency had properly considered this additional compensation, OBXtek's proposed compensation would have significantly exceeded the incumbent rates and the agency would have had no basis to conclude OBXtek's proposed compensation was unrealistic. *Id.*

In the alternative, the protester notes that our decisions have explained that, when conducting an analysis pursuant to FAR provision 52.222-46, agencies must not only assess the compensation for realism, but also must compare proposed compensation to incumbent compensation and, if the proposed compensation is lower than the incumbent compensation, must specifically consider the effect of the compensation on continuity of operations and an offeror's ability to retain professional staff. Protest at 7-10. The protester contends that, while the agency considered the realism of OBXtek's proposed compensation and performed a comparison to the incumbent rates, the agency failed to reasonably consider whether OBXtek's lower rates would have a negative effect on retention or continuity of operations. *Id.* Specifically, OBXtek argues that the agency mechanically applied an arbitrary 10 percent cutoff when considering proposed compensation compared to incumbent compensation and did not substantively consider the effects of OBXtek's rates on continuity or retention. *Id.*

The RFP informed offerors that the agency would evaluate total compensation plans in accordance with FAR provision 52.222-46. AR, Tab 11, FOPR attach. 7, Evaluation

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<sup>1</sup> The protested task order is valued at more than \$10 million and was issued under GSA's OASIS multiple-award contract. Accordingly, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106(f)(1)(B).

<sup>2</sup> The protester raised several additional arguments in its initial protest. For example, the protester initially challenged both the agency's evaluation of the awardee's compensation plan and the conduct of discussions. Protest at 7-14. The agency responded in detail to those allegations, but the protester did not substantively respond to the agency's arguments in its comments and supplemental protest. Where an agency provides a detailed response to a protester's assertions and the protester does not respond to the agency's position, we deem the initially raised arguments abandoned. *Citrus College; KEI Pearson, Inc., B-293543 et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. Accordingly, we consider the protester to have abandoned those arguments, and they are dismissed.

Criteria at 7. As relevant here, that provision states that the “[r]ecompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees.” FAR provision 52.222-46(a). The provision notes that such a lowering of compensation “can be detrimental in obtaining the quality of professional services needed for adequate contract performance” and that it is in the government’s best interest that professional employees, as defined in 29 C.F.R. § 541, be properly and fairly compensated. *Id.*

Accordingly, the provision instructs offerors to “submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract.” *Id.* The provision requires the agency to “evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements.” *Id.* The provision further requires the agency to assess the offeror’s “ability to provide uninterrupted high-quality work” by considering the proposed professional compensation “in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation.” *Id.*

Concerning the protester’s argument that the agency unreasonably ignored additional proposed compensation, we see no basis to conclude the agency’s analysis was unreasonable. As the agency notes, the protester’s proposal was internally inconsistent: the protester’s compensation plan narratives in its technical proposal described certain additional benefits and cash allowances such as reimbursement for relocation or education expenses, but those benefits were expressly not included in the protester’s proposed compensation and fringe rates. *Compare* AR, Tab 33, OBXtek Revised Compensation Plan Narrative at 18-27 (explaining that the protester was proposing additional compensation through various allowances) *with* AR Tab 34, OBXtek Revised Compensation Plan Rates at 1-6 (providing salary and fringe rates that exclude the proposed additional compensation described in the compensation plan narrative). That is to say, while the protester alleges that the agency’s analysis failed to include additional direct compensation or fringe benefits that the protester proposed in its compensation plan narratives, the protester also failed to include that additional compensation in its compensation plan rates.

This omission is significant for several reasons. First, we note that it is an offeror’s responsibility to submit a well-written proposal that allows a meaningful review by the procuring agency, and where an offeror fails to do so, it runs the risk that a procuring agency will evaluate its proposal unfavorably. *Lovelace Scientific and Tech. Servs.*, B-412345, Jan. 19, 2016, 2016 CPD ¶ 23 at 10. Where, as here, the protester’s proposal was internally inconsistent, the protester ran the risk of receiving an unfavorable evaluation and cannot now complain that the agency resolved the ambiguity in a way that disfavored the protester.

Second, even assuming that the agency should have considered the additional compensation, the character of many of the proposed benefits was highly contingent, which would prevent the agency from completing a total compensation analysis. Specifically, the agency notes that the protester’s proposal indicated that the proposed

additional compensation consisted of various allowances--such as a relocation allowance, education benefits, and a living quarters allowance--that could be worth varying amounts depending on the individual circumstances of the employees. Supp. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7. It is not clear from the protester's proposal that most professional employees would derive the full benefit the protester estimated from those allowances. For example, we concur with the agency that there is no reason to believe that incumbent professional employees already working at the relevant locations would derive any benefit from a relocation allowance. See Supp. COS/MOL at 12. Accordingly, it would be inappropriate and inaccurate for the agency to have included and considered this maximum possible additional compensation as part of the protester's proposed professional employee compensation as a point of comparison, as the protester now urges.

Moreover, while the protester notes that certain allowances it proposed, such as a cost-of-living adjustment, were not contingent and would benefit all professional employees, the protester's proposal did not categorize the various allowances separately, and the protester does not explain how the agency should have calculated the "correct" value of the additional compensation. See AR, Tab 33, OBXtek Revised Compensation Plan Narrative at 19-26 (including a single sum representing the protester's estimated value of all allowances with no breakdown). The protester also does not explain how the agency could reasonably rely on the protester's compensation plan narrative estimates when the protester specifically excluded this additional compensation from its actual proposed compensation plan rates. See AR Tab 34, OBXtek Revised Compensation Plan Rates at 1-6; see also AR, Tab 33, OBXtek Revised Compensation Plan Narrative at 18 (explaining that the additional compensation was not included in the fringe rate).

Indeed, given that the value of additional conditional compensation may not be readily estimated, one logical reading of the protester's decision to omit those benefits from its proposed compensation plan rates is that the protester made a business judgment that the benefits were insufficiently definite to include in its proposed rates. See Supp. COS/MOL at 13-16. If, as the protester now argues, some of those allowances were actually unconditional additional direct compensation, the protester should have included them in its compensation plan rates, either as part of the position's salary or fringe rate as appropriate.

In short, the protester's narrative described additional compensation that the protester, for unknown reasons, omitted from both its proposed salary and fringe compensation rates. This created an inconsistency in the protester's proposal where its compensation plan narrative provided for different compensation from its compensation plan rates, and the protester cannot now fault the agency for, in effect, taking the protester at its word and treating the protester's proposed compensation plan rates as authoritative. See, e.g., *ARBEIT, LLC*, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4 ("[I]t is an offeror's responsibility to submit a well-written proposal [ . . . ] Proposals with significant informational deficiencies may be excluded from the competition, whether the

deficiencies are attributable to either omitted or merely inadequate information addressing fundamental factors”).

Turning to the protester’s second argument, our Office has stated that the purpose of a review of compensation for professional employees is to evaluate each offeror’s ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention. *ENGlobal Gov’t Servs., Inc.*, B-419612.3, Dec. 15, 2021, 2022 CPD ¶ 12 at 11; *L-3 Nat’l Sec. Sols., Inc.*, B-411045, B-411045.2, Apr. 30, 2015, 2016 CPD ¶ 233 at 7. If the agency determines that the awardee’s proposal envisions lower compensation levels compared to the incumbent contractor, then the agency must further evaluate the awardee’s proposed compensation plan on the basis of maintaining program continuity, among other considerations. *ENGlobal Gov’t Servs., Inc.*, *supra*; *SURVICE Eng’g Co., LLC*, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 5-6; FAR provision 52.222-46(b).

While the protester is correct that our decisions have consistently explained that agencies must not only consider realism, but also must compare proposed compensation to incumbent rates, the protester has not demonstrated that the agency failed to perform the required analysis here. Specifically, the agency compared the protester’s rates to the incumbent rates and concluded that the protester’s rates were almost universally lower than the incumbent rates, and in many cases more than ten percent lower, a threshold the agency used to determine whether the rate variance was significant. AR, Tab 46, FODD at 41-43. While the protester takes issue with the agency’s 10 percent threshold, alleging the agency performed a mechanical numerical analysis, the record does not support that the agency’s analysis was unreasonable.

First, we note that the protester’s rates were, in many cases, much lower than 10 percent below the incumbent rates. Accordingly, even if the protester could demonstrate that the agency’s 10 percent threshold were unreasonable, which it has not done, the protester’s rates were not particularly close to that threshold. For example, the agency was specifically concerned that, at two overseas locations, all of OBXtek’s proposed rates were significantly lower than the incumbent rates, including one location where OBXtek’s proposed compensation for all positions was between 24 and 26 percent lower than the incumbent compensation. *Id.* While a purely numerical analysis of professional compensation will not necessarily be appropriate in all cases, when professional compensation is extremely low, it is reasonable for an agency to conclude that it is unrealistic solely on that basis. *Cf. Apptis, Inc.*, B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 10-11 (noting that in some cases differences in professional compensation may be significant enough to be unrealistic *per se*).

Second, the agency also found OBXtek’s proposed rates substantively concerning because two of the overseas locations for which the protester’s compensation was significantly low are locations that have historically faced challenges in hiring and retaining qualified staff, even at the incumbent rates. AR, Tab 46, FODD at 43. The agency was substantively concerned that existing staffing problems would only be

exacerbated by proposing significantly lower compensation. *Id.* Accordingly, we cannot conclude that the agency was unreasonable in concluding that OBXtek's significantly lower compensation was unrealistic.

To summarize, the agency concluded that OBXtek's compensation was "unrealistically low," and that the proposed professional compensation "did not look as if the Offeror would be able to maintain program continuity, uninterrupted high-quality work, and availability of required competent professional service employees across all locations." *Id.* Here, the agency did precisely what our decisions have explained was required: the agency assessed the realism of the protester's proposed compensation, compared it to the incumbent rates, and, upon finding that the protester's rates were below the incumbent rates, considered the effect the proposed compensation plan would have on maintaining program continuity, among other considerations. We see no basis to question the agency's finding that the protester's proposed compensation was unrealistic because it was significantly below incumbent compensation at locations with a history of being hard to staff.<sup>3</sup>

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>3</sup> The protester also challenged the agency's evaluation of its corporate experience, but we need not reach this argument. Protest at 11-12. In this case, the FOPR provided that the agency would assess the realism of an offeror's compensation plan first, and offerors that did not propose realistic compensation could be excluded from further consideration. AR, Tab 11, FOPR attach. 7, Evaluation Criteria at 7. Here the agency concluded the protester was unawardable because its proposed compensation plan was unrealistic, and, as discussed above, we see no basis to question that conclusion. As the protester was properly found unawardable there can be no possible competitive prejudice flowing from any alleged errors in the agency's evaluation of the protester's corporate experience. See, e.g., *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3 (explaining that competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest).