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Decision

Matter of: SMS Data Products Group, Inc.

File: B-423197; B-423197.4

Date: March 4, 2025

Eric S. Crusius, Esq., Hunton Andrews Kurth LLP, and Tanner N. Slaughter, Esq., and Richard Ariel, Esq., Holland & Knight LLP, for the protester.
Lee Dougherty, Esq., Effectus, PLLC, for Trace Systems Inc., the intervenor.
Colonel Nina R. Padalino, Aaron J. Weaver, Esq., Major William M. Fuller, Beatrice K. Foster, Esq., and Susan E. Bond, Esq., Department of the Air Force, for the agency.
Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency’s evaluation of proposed professional compensation plans is sustained where the record does not demonstrate that the agency conducted an evaluation in accordance with the requirements of Federal Acquisition Regulation provision 52.222-46.
 2. Protest that the agency unreasonably evaluated technical proposals is denied where the record demonstrates that the evaluation was consistent with the solicitation and procurement law.
 3. Protest that the agency failed to analyze price risk in accordance with Defense Federal Acquisition Regulation Supplement provision 252.204-7024 is sustained where the record does not contain the required price risk report.
 4. Protest that the agency failed to analyze the performance risk posed by the awardee’s low price is denied where the solicitation did not put offerors on notice that the agency would conduct a price realism analysis of total price.
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DECISION

SMS Data Products Group, Inc., of McLean, Virginia, protests the issuance of a task order to Trace Systems Inc., of Vienna, Virginia, under fair opportunity proposal request (FOPR) RS3-23-0047, issued by the Department of the Air Force for Combined Air and Space Center Operations Center (CAOC) communications support for the U.S. Air

Forces Central Command. SMS argues that the Air Force unreasonably evaluated professional employee compensation plans, that the agency's evaluation of technical proposals was unreasonable, that the agency failed to conduct a price risk analysis required by the Defense Federal Acquisition Regulation Supplement (DFARS), and that the agency failed to assess the performance risk posed by the awardee's low price.

We sustain the protest.

BACKGROUND

The agency issued the FOPR on March 24, 2024, pursuant to the procedures in Federal Acquisition Regulation (FAR) subpart 16.5, to small businesses holding a Department of the Army Responsive Strategic Sourcing for Services multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR), Tab 4, FOPR at 1. The contemplated task order would be issued to the offeror whose proposal represented the best value to the agency and included requirements that would be compensated either on a fixed-price or cost-reimbursable basis with not to exceed limits. *Id.* at 1, 9. The labor portion of the requirement was fixed-price; cost-reimbursable items included government directed travel and required material and equipment purchases. *See id.* at 7-8. The procurement would be conducted in two phases; phase one contained three factors that would be evaluated on a pass/fail basis--evidence of top-secret security clearance, technical experience, and transition-in plan. *Id.* at 9. Only proposals evaluated acceptable under all three factors would proceed to phase two. *Id.* at 10.

Phase two contained two factors: management and staffing plan; and price. *Id.* at 9. The management and staffing plan factor was significantly more important than price. *Id.* The management and staffing plan factor would be assigned a combined technical/risk rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 11. The management and staffing plan contained two additional criteria referred to as aspects. *Id.* at 7. Aspect one focused on management, and aspect two focused on the staffing plan; both aspects contained multiple subparts. *Id.*

The FOPR advised offerors that the Air Force would evaluate the required proposed professional compensation plans in accordance with FAR provision 52.222-46. *Id.* at 13. (That requirement will be discussed in some detail below.) The FOPR further advised offerors that “[f]ailure to demonstrate a realistic Professional Compensation Plan may render a proposal ineligible for award on the basis that the Offeror does not understand the requirement or proposed unrealistically low professional compensation.” *Id.* The solicitation required the compensation levels for professional employees to address all aspects of FAR provision 52.222-46, reflect a clear understanding of work to be performed, and “indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives.” *Id.* The FOPR advised offerors that “proposed professional compensation data may be evaluated at detailed or aggregate levels, or both.” *Id.* The FOPR further advised that in accordance with FAR provision 52.222-46(b), “proposals envisioning compensation levels lower than incumbent prices for the same work [would] be evaluated on the

offeror's ability to maintain program continuity, uninterrupted high-quality work, and availability of required competent professional service employees." *Id.* Offerors were "cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement." *Id.* With respect to professional and non-professional labor categories, the Air Force would "compare proposed rates to historical incumbent rates and/or market rates to determine realism." *Id.*

The FOPR incorporated DFARS provision 252.204-7024. AR, Tab 4, FORP attachs., attach. 3, provisions and clauses at 99. The relevant section of this provision, describing use of the supplier performance risk system (SPRS), states that the contracting officer will consider item, price, and supplier risks. DFARS provision 252.204-7024(c). The DFARS specifies that "[p]rice risk will be considered in determining if a proposed price is consistent with historical prices paid for a product or a service or otherwise creates a risk to the Government." DFARS provision 252.204-7024(c)(2). "Price risk" is defined as "a measure of whether a proposed price for a product or service is consistent with historical prices paid for that item or service." DFARS provision 252.204-7024(a). The DFARS provides that "[t]he Contracting Officer may consider any other available and relevant information when evaluating a quotation or an offer." DFARS provision 252.204-7024(e).

The Air Force received proposals from eight firms; six firms, including the protester and the awardee, advanced to phase two. AR, Tab 13, Fair Opportunity Decision Document (FODD) at 1-2, 7. Under the management and staffing plan factor, the agency assigned Trace's proposal a rating of outstanding and identified two strengths¹--dedicated program support team and continuity of operations. *Id.* at 8. Under that factor, the Air Force also assigned SMS's proposal a rating of outstanding and identified two strengths: a corporate team to support CAOC IT services; and two deputy task order program managers. *Id.* at 11. Trace's total price of \$121,396,298 was lower than SMS's, at \$199,589,312; the total price of another offeror, MicroTechnologies LLC (MicroTech), was \$151,254,337. *Id.* at 8.

The agency assessed the proposals of Trace, SMS, and MicroTech ratings of outstanding under the management and staffing plan factor. The source selection authority (SSA) determined that it was "implausible to award to SMS" when, of the three offerors receiving the same technical rating, the protester proposed the highest price. *Id.* at 12. The SSA conducted a trade-off between the proposals of MicroTech and Trace. Although both proposals received outstanding ratings, the SSA found that "it is apparent when looking behind the ratings that Trace's proposal offers a better value" than MicroTech's. *Id.* at 12. The SSA thus found that, "[b]ased on the merit of the two proposals, MicroTech appears to have a marginally superior proposal." *Id.* The SSA nevertheless recognized "a substantial price premium associated with the MicroTech

¹ The solicitation defined a strength as "[a]n aspect of an offeror's proposal with merit or will exceed specified performance or capability requirements to the advantage of the Government during contract performance." FOPR at 12.

proposal when compared to Trace’s proposal” and noted that “price has become increasingly more important as proposals have become increasingly technically equivalent.” *Id.* at 12. Based on an integrated assessment of all proposals in accordance with the solicitation evaluation criteria, the SSA found that Trace’s proposal represented the best value to the government. *Id.* The agency issued the task order to Trace, and this protest followed.²

DISCUSSION

SMS contends that the Air Force unreasonably evaluated the professional employee compensation plans; as explained below, we agree with the protester and sustain the protest on that basis. We deny the allegation that the agency unreasonably evaluated technical proposals. We sustain the allegation that the Air Force failed to conduct the analysis required under DFARS provision 252.204-7024. Lastly, we deny the allegation that the agency failed to evaluate the performance risk posed by the awardee’s low price.

Evaluation of Professional Employee Compensation Plans

SMS asserts that “the Agency’s own recounting of its price analysis--and what the record indicates occurred--does not meet the requirements of FAR [provision] 52.222-46.” Comments at 4. The protester argues that, although the Air Force assessed proposed professional employee compensation based on a benchmark of eight percent or more below the historical rate or market data, the agency does not explain the basis for that benchmark. *Id.* The Air Force argues that its evaluation of compensation for professional employees was reasonably based, not arbitrary, and consistent with the terms of the solicitation and applicable procurement laws and regulations. Memorandum of Law (MOL) at 12.

FAR provision 52.222-46 requires a two-prong evaluation of professional employee compensation plans. The first prong is, in effect, a price realism evaluation of proposed compensation, to determine whether an offeror understands the contract requirements and has proposed a compensation plan appropriate for those requirements. *IBSS Corp.*, B-422757 *et al.*, Oct. 24, 2024, 2024 CPD ¶ 258 at 8. The second prong requires an agency to determine whether a proposal “envision[s] compensation levels

² The awarded value of the task order at issue exceeds \$25 million. Accordingly, at the time this protest was filed on November 26, 2024, this procurement was within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B); see National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, ____ Stat. ____ § 885 (2024) (amending jurisdictional threshold to \$35 million for protests of orders placed under IDIQ contracts awarded under authority of title 10, effective December 23, 2024); *Technatomy Corp.*, B-405130, June 14, 2011, 2011 CPD ¶ 107 at 5-6 (changes to jurisdiction will not be given retroactive effect, absent specific statutory direction).

lower than those of predecessor contractors” by comparing proposed compensation rates to those of the incumbent. *Guidehouse LLP; Jacobs Tech. Inc.*, B-420860 *et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 7; *SURVICE Eng’g Co., LLC*, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 6-7. The comparison of an offeror’s proposed professional employee compensation to that of the incumbent contractor is a separate inquiry from the realism of the proposed plan and its impact on recruiting and retention. *The Bionetics Corp.*, B-419727, July 13, 2021, 2021 CPD ¶ 259 at 5 (noting that, in addition to a price realism analysis, FAR provision 52.222-46 requires the agency to compare the awardee’s proposed professional compensation to that of the incumbent contractor).

This FAR provision therefore requires, as a threshold matter, that an agency compare the compensation of the incumbent professional staff to the proposed professional compensation. Our Office has sustained protests when agencies failed to conduct such a comparison. *Guidehouse LLP; Jacobs Tech. Inc.*, *supra* at 9-10 (sustaining protest where solicitation incorporated FAR provision 52.222-46 and the agency failed to compare compensation plans of the awardee and incumbent contractor); *SURVICE Eng’g Co., LLC*, *supra* at 7 (same). If the awardee proposed lower compensation levels than the incumbent contractor, the agency must further evaluate the awardee’s proposed compensation plan for its ability to maintain program continuity, among other considerations. *Bionetics Corp.*, *supra*.

To evaluate proposed professional employee compensation, the Air Force first compared each offeror’s direct labor rates. To determine realism, the agency then compared the rates to an eight percent discount from incumbent direct labor rates for the same or similar labor categories; the Air Force also compared the proposed rates to market rates from ERI. AR, Tab 9, Fair Opportunity Evaluation Report (FOER) at 7. The agency explains that it “used a benchmark of 8 percent] or more below the historical or market data rate (when a historical rate was not available) to determine if there was a realism concern.” *Id.* The pricing team determined that realism concerns “may exist when proposed rates were more than 8 [percent] below the incumbent rate or market data.” AR, Tab 11, Trace Price Evaluation Report at 13. The Air Force set this baseline “close to existing historical rates as there is an inherent competitiveness associated with the skillsets required in this [performance work statement (PWS)] and the previous iteration received ample price competition reducing labor costs.” *Id.* The Air Force “considered price competition as a cause for lower proposed rates; however, rates below this [eight percent] benchmark were still considered questionable due to the probable negative impact to recruitment and retention.” AR, Tab 9, FOER at 7. At the time of the initial realism evaluation, six of nine direct labor rates for Trace’s professional employees were more than eight percent below the incumbent rates. AR, Tab 11, Trace Price Evaluation Report at 15.

The Air Force issued an interchange notice (IN) to Trace requesting that the awardee address the professional employee direct labor rates that the agency identified as more than eight percent below the incumbent rates. AR, Tab 11, Trace Price Evaluation Report at 13. After Trace adjusted those direct rates, only one remained more than eight percent below the incumbent rate; that rate was 11.2 percent below the incumbent

rate. *Id.* at 25. With regard to the rates that were below the incumbent rate--but less than eight percent below--the agency concluded that the rates were “now within a realistic range when compared to the incumbent’s historical rate and the market data obtained from ERI.” *Id.* at 26. With regard to the rate that was more than eight percent below the incumbent rate, the agency concluded that, “[c]onsidering the Offeror’s additional data regarding total compensation and the revisions made to its proposal, the Government takes no issue with this response and associated revisions.” *Id.* The agency considered the IN resolved. *See id.*

The above-described record of the agency’s evaluation, however, does not support a conclusion that the Air Force fully complied with the requirements of FAR provision 52.222-46. As described above, Trace’s proposal included rates for professional employees that were lower than the incumbent rates for the same work, yet there is no record of an evaluation of whether the lower rates were sufficient to “maintain program continuity, uninterrupted high-quality work, and availability of required competent professional service employees” as required by FAR provision 52.52.222-46. Rather, the agency mechanically flagged rates only if they were more than eight percent lower than the incumbent rates. The record, however, contains no explanation, discussion, or support for the Air Force’s application of the eight percent baseline. In other words, the agency has offered no rationale for why it believed a firm could maintain program continuity, uninterrupted high-quality work, and availability of required competent professional employees while paying them up to eight percent less than what the incumbent employees are currently being paid. In fact, there is no representation or record to support a conclusion that the agency in fact considered the elements of the FAR provision 52.222-46(b) analysis when it decided to use the eight percent baseline.³ We therefore sustain the challenge to the agency’s evaluation of the direct labor rate component of Trace’s proposed professional employee compensation plan.⁴

Evaluation of SMS’s Technical Proposal

SMS proposed a “Team SMS Approach” that contained the following seven “features”: [DELETED]. AR, Tab 7, SMS Technical Proposal at 8-9. SMS contends that the Air Force conducted a flawed evaluation of SMS’s technical proposal under the management and staffing plan factor because the agency failed to assess the protester’s proposal a separate strength for each of those seven features. Comments

³ The only reference in the record to the agency’s consideration of the baseline is the general statement by the agency that the pricing team determined that realism concerns “may exist when proposed rates were more than 8 [percent] below the incumbent rate or market data.” AR, Tab 11, Trace Price Evaluation Report at 13.

⁴ Trace proposed to “capture as many of the incumbent personnel on-site at contract award as possible.” AR, Tab 30, Trace Technical Proposal at 24. Given the awardee’s goal of incumbent personnel capture, it was especially critical that the agency substantiate its findings that Trace’s proposed labor rates were realistic.

at 10. The Air Force contends that SMS's allegations amount to no more than mere disagreement with the agency's reasonable evaluation decisions. MOL at 16. As discussed below, we agree with the Air Force.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *UltiSat Inc.*, B-418146.2, B-418146.3, May 19, 2020, 2020 CPD ¶ 282 at 4. In reviewing a protest of a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Id.* A protester's disagreement with an agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. *Id.* The "more" could be a credible allegation that the agency disparately evaluated proposals. *Qbase, LLC et al.*, B-416377.9 *et al.*, Nov. 13, 2020, 2020 CPD ¶ 367 at 12 (sustaining allegation that agency unreasonably failed to assign protester's proposal a strength for proposing a web developer with extensive web development experience when record demonstrated that other offerors' proposals received strengths for that proposal feature); *Sparksoft Corp.*, B-420944.2, B-420944.3, Dec. 27, 2022, 2023 CPD ¶ 12 at 11 (sustaining allegation that an agency's technical evaluation was unreasonable when the agency disparately evaluated proposals by relying on assumptions when assigning strengths to one proposal but not to another).

Two of the seven features--[DELETED]--were included as parts of strengths that the Air Force assigned to SMS's proposal. Under the management structure for task order oversight subpart of the management aspect⁵, the agency assessed SMS's proposal a strength for SMS's [DELETED]. AR, Tab 10, SMS Evaluation Report at 4. In SMS's view, the "[DELETED] does not rely on any other part of [that assessed strength] to 'exceed specified performance or capability requirements to the advantage of the Government during contract performance'" and, therefore, should have been assigned a separate strength. Comments at 11, *quoting* FORP at 12. Similarly, while SMS claims that the Air Force should have assigned its proposal a strength under the continuity of operations subpart of the management aspect for the [DELETED] feature offering [DELETED] capabilities, Comments at 14, the Air Force assessed SMS's [DELETED] capabilities as a portion of a strength assessed under the management structure for task order oversight subpart of aspect one. AR, Tab 10, SMS Evaluation Report at 4 (noting contribution of [DELETED] support to assessed strength).

⁵ As indicated above, the management and staffing plan factor had two aspects, each of which had multiple subparts. FOPR at 7. Aspect one dealt with management considerations, such as the program and site-level management structure, the management approach, and lines of authority and communication. *Id.* Aspect two concerned the staffing plan and described in detail its required attributes, such as the approach to recruit, hire, train, and retain personnel. *Id.*

Although SMS would prefer that the Air Force had assessed the protester's proposal two separate strengths for the proposed [DELETED] and [DELETED] features, the protester fails to demonstrate that the agency's evaluation was unreasonable. The Air Force assessed Trace's proposal a strength for its program support team, and Trace's [DELETED] capabilities contributed to that strength; the Air Force did not assign Trace's proposed [DELETED] capabilities a separate strength. See AR, Tab 13, FODD at 11. The agency evaluated similar proposals similarly. SMS disagrees with this aspect of the evaluation of its technical quotation without offering something more that would demonstrate the evaluation's unreasonableness.

SMS contends that the Air Force unreasonably failed to assess the protester's proposal a strength for the transition-in feature of its Team SMS Approach. Comments at 11-12. The Air Force contends that an offeror's transition-in plan was evaluated as pass/fail in phase one. MOL at 17-18; see FOPR at 9 (noting three criteria to be evaluated as pass/fail, one of which is transition-in plan). The protester argues, however, that "[t]he PWS clearly provides that the transition-in plan falls under the management plan" which is qualitatively evaluated under the management and staffing plan factor. Comments at 12, *citing* AR, Tab 4, PWS at 6. That is incorrect; the transition plan and the actual transition are separate requirements. The transition-in plan falls under the management plan portion of the PWS: "The contractor shall ensure minimum service disruptions and no service degradation during and after transition. The contractor shall implement and transition activities in accordance with (IAW) final Transition Plan." AR, Tab 4, PWS at 6. The transition is to conform to the transition-in plan that was evaluated as pass/fail under phase one. *Id.* In any event, as it did for each of the seven features, the only rationale that SMS provides for why the Air Force's evaluation is unreasonable is simply that "each of these seven features [as quoted above] individually meets the definition of 'strength' under the Solicitation." Protest at 25. This allegation is denied.

The protester's Team SMS Approach included an "[DELETED]" feature that "provide[s] decision authority to ensure Team SMS meets operational Requirements." AR, Tab 7, SMS Technical Proposal at 8. The Air Force argues that SMS's proposal recognizes this feature merely enables SMS to meet requirements, and thus the feature could not qualify as a strength. MOL at 18. SMS characterizes the agency's reliance on "the word choice of SMS" as "playing word games," without ever demonstrating that the agency's reliance on SMS's own characterization of the proposed feature was unreasonable. Comments at 12. SMS's proposal indicates that this feature will ensure that the protester meets operational requirements; the protester's objection to the agency's decision not to award this feature a stand-alone strength, without more, does not render the evaluation unreasonable.

SMS contends that the Air Force unreasonably failed to assess the protester's proposal separate strengths for its training assurance and staffing assurance features, while the record demonstrates that the agency evaluated those features fairly. Under the training assurance feature of Team SMS Approach, "SMS allocates up to \$[DELETED] per employee per year to ensure personnel maintain certifications, obtain new certifications, or obtain additional degrees." AR, Tab 7, SMS Technical Proposal at 9. SMS argues

that the training assurance feature of the protester's proposal merited a strength because it "ensure[s] retention of employees and lowering turnover risk, which clearly provides an advantage to the Government during performance." Comments at 15. The protester contends that its proposal does not merely meet a minimum requirement, because "retention of employees is integral to contract performance." *Id.* Similarly, Trace's proposal includes, as part of an employee's Personal Growth and Ascension Plan, "Professional Development Funds up to a \$[DELETED] annual maximum to be used for continuing education requirement to maintain their required certifications." AR, Tab 30, Trace Technical Proposal at 23. The two proposals contain comparable benefits, and neither proposal was assessed a strength.

SMS describes its staffing assurance feature as "the total staffing approach from Team SMS." AR, Tab 7, SMS Technical Proposal at 9. SMS's plan includes succession planning, as does Trace's. AR, Tab 30, Trace Technical Proposal at 24 (noting that Trace "will maintain a succession plan for all key positions"). SMS's plan includes cross training and career advancement, as does Trace's. *Id.* at 27 (noting that an employee's profession development plan will "target cross training opportunities that increase upward mobility for employees"). SMS's plan encourages promoting from within, as does Trace's. *Id.* at 26 (noting that "[a]s personnel gain additional qualifications and skills on the program, they will become eligible for promotions, bonuses, and targeted retention efforts"). Again, the two proposals are comparable and were evaluated similarly, in that the Air Force assessed neither proposal a strength. These allegations are denied.

Finally, SMS argues that the [DELETED] feature of its Team SMS Approach should have been awarded a strength. Comments at 13. The Air Force argues that "the technical evaluation team specifically acknowledged SMS's approach using [DELETED] in its evaluation report and determined this approach would enable the Offeror to meet the minimum requirements." MOL at 18, *citing* AR, Tab 10, SMS Evaluation Report at 4 (noting that SMS's proposal "adequately defined a plan to proactively meet CAOC mission requirements," and that the protester's approach "incorporated an [DELETED]"). SMS contends that this feature warranted a strength because, for example, "SMS's [DELETED] discusses incorporating [DELETED], (AR Tab 7 [SMS Technical Proposal] at 12), which are not part of the Solicitation or PWS." Comments at 13. Similarly, Trace proposed an "[DELETED]" with "operationally proven processes and procedures."⁶ AR, Tab 30, Trace Technical Proposal at 10. The agency did not assess Trace's proposal a strength for this feature, which was not a solicitation requirement. See AR, Tab 13, FODD at 11. Trace and SMS both proposed recognized tools to assist with contract performance, and neither proposal was assigned a stand-alone strength for doing so. The record does not establish that the agency assigned--or failed to assign--strengths disparately, and this allegation is denied.

In summary, SMS asserts, with no elaboration, that "each of these seven [block-quoted] features individually meets the definition of 'strength' under the Solicitation." Protest

⁶ [DELETED] *Id.*

at 25. SMS identifies no objective error--such as disparate treatment--to support its disagreement with the Air Force's evaluation of the protester's technical proposal. Moreover, the record demonstrates that the agency fairly assessed strengths. The allegation that the Air Force unreasonably failed to assess SMS's proposal these seven strengths is denied.

DFARS Requirement for Price Risk Evaluation

SMS argues that the Air Force failed to compare Trace's and MicroTech's prices with historical prices pursuant to DFARS provision 252.204-7024. Comments at 6. The Air Force contends that its evaluation was consistent with the DFARS requirement. MOL at 12-13.

The solicitation contained DFARS provision 252.204-7024, which requires the contracting officer to utilize SPRS in evaluating a proposal's "price risk." AR, Tab 4, FORP attachs., attach. 3, provisions and clauses at 99; DFARS provision 252.204-7024(c)(2). Price risk analysis is one of three required analyses; the other two are item risk and supplier risk. DFARS provision 252.204-7024(c). The DFARS defines price risk as "a measure of whether a proposed price for a product or service is consistent with historical prices paid for that item or service." DFARS provision 252.204-7024(a).

The record supports SMS's contention that the Air Force failed to conduct the required DFARS price risk analysis. The contracting officer claims to have "reviewed the Supplier Performance Risk System" and to have "considered the risk assessments and determined the results provided no indication of concern as Trace received a 'Green' Supplier Risk Score and had no counts of suspected counterfeit." Contracting Officer's Statement at 15, *citing* AR, Tab 12, Trace Responsibility Determination at 12-13. The agency ran a supplier risk report--not the required price risk report. See AR, Tab 12, Trace Responsibility Determination at 12 (noting the results of the "supplier risk report"). The record lacks evidence that the Air Force complied with this requirement.

The agency argues that the "DFARS [provision] 252.204-7024 price risk assessment was not used as part of the separate price evaluation and analysis, as it was not part of the price evaluation criteria outlined in the Solicitation." COS/MOL at 13. Instead, the agency asserts that "the price evaluation team properly used the evaluation criteria at para. 4.3.2 of the Solicitation to conduct the price evaluation and analysis." *Id.* Solicitation ¶ 4.3.2 outlines the requirements for the agency's evaluation of price, including the evaluation of the realism of direct labor rates required by FAR provision 52.222-46.

As discussed above, we sustain SMS's challenge to the agency's evaluation of proposals under FAR provision 52.222-46 because we find that evaluation unreasonable. The Air Force may not rely on an unreasonable price evaluation under the FAR to satisfy the DFARS requirement. We therefore sustain the allegation that the Air Force failed to conduct the price risk analysis required by DFARS provision 252.204-7024.

Evaluation of Risk in Technical Proposals

SMS argues that, in this procurement, “a low price reflects a risk that the offeror may not be able to meet the staffing requirements of the contract.” Comments at 8. The protester contends that the Air Force failed to assess whether, in accordance with the solicitation, the low prices proposed by Trace and MicroTech present a risk of unsuccessful contract performance. *Id.* The Air Force argues that it performed the two assessments required under the solicitation: it “subjected Trace’s proposal for professional employee compensation to an in-depth price realism evaluation and analysis as required by FAR 52.222.46” and “reviewed the SPRS **price risk assessment** as required in DFARS [provision] 252.204-7024.” MOL at 15.

The solicitation advised offerors that the Air Force would assign proposals a “combined technical/risk rating” that “includes consideration of risk in conjunction with the significant strengths, strengths, uncertainties, weaknesses, significant weaknesses, and deficiencies in determining technical ratings.” FOPR at 11. The risk ratings were defined solely in terms of technical attributes and contained no reference to price. *Id.* at 11-12. For example, an outstanding proposal “demonstrates an exceptional approach and understanding of the requirements and contains multiple strengths and/or at least one significant strength, and risk of unsuccessful performance is low,” and a proposal evaluated as low risk “may contain weakness/weaknesses which have low potential to cause disruption of schedule, increased cost, or degradation of performance.” *Id.* The solicitation unambiguously defines risk in terms of the evaluation of technical proposals; the greater the number of weaknesses, significant weaknesses, and deficiencies, the greater the level of evaluated risk. See FOPR at 11-12. The agency assigned a combined technical/risk rating of outstanding/low to the proposals of SMS, Trace, and MicroTech. AR, Tab 13, FODD at 12.

As Trace notes, under the price factor, risk is addressed only in the context of unbalanced pricing. Comments at 8, *citing* FOPR at 14. The FOPR did not put offerors on notice that the Air Force would conduct a price realism analysis of total price. See FOPR at 14. Without such notice, the agency was precluded from performing a price realism analysis of total price.⁷ There is no support in the solicitation for SMS’s assertion that the risk portion of the combined technical/risk rating was flawed when it failed to consider the risk of low price to contract performance. The solicitation perceived performance risk in weaknesses, significant weaknesses, and deficiencies--

⁷ Where a solicitation provides for the evaluation of prices for realism purposes, an agency may conduct a price realism analysis for the limited purposes of assessing whether an offeror’s low price reflects a lack of technical understanding or performance risk. FAR 15.404-1(d)(3); *NextGen Fed. Sys., LLC, B-420456 et al.*, Apr. 14, 2022, 2022 CPD ¶ 99 at 8. Here, the solicitation did not advise offerors that the Air Force would conduct a price realism analysis. See FOPR at 14 (advising offerors that the agency would evaluate prices under FAR section 15.404-1(b), which defines techniques for determining whether prices are fair and reasonable).

not low price. We thus find no merit to the allegation that the agency failed to consider price risk in assigning the risk portion of the combined technical/risk rating.

RECOMMENDATION

As detailed above, we find the agency's evaluation of professional employee compensation plans to be unreasonable. We also find that the Air Force failed to conduct the price risk analysis required under DFARS provision 252.204-7024. We recommend that the Air Force reevaluate proposals consistent with this decision. We also recommend that the Air Force perform a new best-value tradeoff and make a new source selection decision. In the event the reevaluation results in the selection of an offeror other than Trace, we recommend that the agency terminate the task order issued to Trace for the convenience of the government and issue the task order to the offeror found to represent the best value, if otherwise proper. We also recommend that SMS be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). SMS should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel