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Decision

Matter of: MicroTechnologies LLC

File: B-423197.2; B-423197.3; B-423197.5

Date: March 4, 2025

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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 challenging the agency's evaluation of the realism of non-professional direct labor rates is sustained where the evaluation does not conform to the solicitation and procurement law and regulation and lacks a reasonable basis.
3. Protest asserting 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 awardee had unmitigable unequal access to information organizational conflicts of interest is denied when the awardee had unremarkable, periodic social interactions with a former government official, and where the alleged improper sharing of confidential information by former employees of protester's subcontractor was a private dispute between parties without agency involvement.
5. Protest that agency conducted misleading discussions is denied where the protester fails to allege improper conduct on the part of the agency and the allegation is, in essence, a challenge to the reasonableness of the price evaluation.

6. Protest that the agency unreasonably evaluated protester's technical proposal is denied where the record demonstrates that the evaluation was consistent with the solicitation and procurement law.

DECISION

MicroTechnologies LLC, of Delray Beach, Florida, 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. The protester asserts that the Air Force unreasonably evaluated professional employee compensation plans, unreasonably evaluated the realism of non-professional direct labor rates, and failed to conduct a price risk analysis required by the Defense Federal Acquisition Regulation Supplement (DFARS). MicroTech further asserts that Trace has unmitigable organizational conflicts of interest (OCIs), the agency's conduct of discussions was misleading, and the agency unreasonably evaluated MicroTech's technical proposal.

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 an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 11.

The FOPR advised offerors that the Air Force would evaluate the required proposed professional employee compensation plans in accordance with FAR provision 52.222-46. *Id.* at 13. The FOPR further advised offerors that "[f]ailure to demonstrate a realistic Professional [Employee] 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 FOPR identified five

professional employee categories¹: trusted thin client (TTC) system administration support (senior only); TTC software application integration support; enterprise engineering support; Air Operations Center weapons system engineering support; and information assurance support. *Id.* The solicitation required the compensation levels for these categories 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 5, FORP attaches., 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 provision further 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, including the protester, who is the incumbent; six firms, including the protester and the awardee, advanced to phase two. AR, Tab 19, Fair Opportunity Decision Document (FODD) at 1-2, 7. The Air Force sent interchange notices (INs) to the offerors. Memorandum of Law (MOL) at 3. MicroTech received four INs. As relevant to this protest, IN 02 identified the following weakness:

¹ The contract would be performed at Shaw Air Force Base, South Carolina, and Al Udeid Air Base, Qatar. AR, Tab 5, FOPR attaches., attach. 1, Performance Work Statement (PWS) at 3. Performance in Qatar required only four of the five professional labor categories. See AR, Tab 18, Trace Price Evaluation Report at 14. We discuss below the agency’s evaluation of those nine professional direct labor rates.

MicroTech's "proposed [DELETED].² The proposed [DELETED]." AR, Tab 12, MicroTech INs at 4. The IN further advised the protester that "[t]he [DELETED]." *Id.* The IN directed MicroTech to "[a]ddress how you intend to successfully support the [DELETED]." *Id.* at 4-5. MicroTech responded to the IN by [DELETED]. See *id.* at 6.

IN 02 also identified concerns with two potentially [DELETED]. *Id.* at 11-13. The IN requested that MicroTech "[r]eview the [DELETED] of the above [DELETED] or provide evidence of your [DELETED]." *Id.* at 13; see FORP at 14 (noting that the Air Force will evaluate direct labor rates to confirm the offeror's understanding of the requirements). MicroTech responded by [DELETED] in question. AR, Tab 12, MicroTech INs at 14.

The Air Force issued an 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 13, Trace IN Price Corrected at 2-3. After Trace upwardly 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 3. 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 comparing to the incumbent's historical rate and the market data obtained from ERI [the Economic Research Institute]." *Id.* at 4. 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.* at 4. The agency considered the IN resolved. *Id.*

Under the management and staffing plan factor, the agency assigned Trace's proposal a rating of outstanding and identified two strengths--dedicated program support team and continuity of operations. AR, Tab 19, FODD at 8. Under that factor, the Air Force also assigned MicroTech's proposal a rating of outstanding and identified three strengths: [DELETED]. *Id.* Trace's total price of \$121,396,298 was lower than MicroTech's, at \$151,254,337. *Id.*

Although both proposals received ratings of outstanding, the source selection authority (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 noted that both proposals offered a [DELETED], resulting in strengths with similar benefits that were thus inapplicable in the tradeoff analysis. *Id.* The SSA recognized that MicroTech's proposal "offered a [DELETED]," which Trace's proposal did not, while Trace's proposal "provided a robust and proactive [DELETED] which has a similar outcome as MicroTech's [DELETED]." *Id.* In the SSA's view, "[t]he primary area that stands out between [the two proposals] is that MicroTech has proposed a [DELETED]." The SSA

² Trace also received four INs, two of which are of relevance to this protest: one concerning unrealistic direct rates associated with professional employees, and another concerning unrealistic direct rates associated with non-professional employees. We discuss these INs in greater depth later in the decision.

thus found that, “[b]ased on the merit of the two proposals, MicroTech appears to have a marginally superior proposal.” *Id.*

The SSA recognized “a substantial price premium associated with the MicroTech 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. The SSA determined that “[t]he Government cannot justify paying an additional \$29,858,038.38 (25 [percent] more) over the life of the contract, or \$5,971,607.68 each year, for MicroTech’s proposal due to a [DELETED], which has a similar outcome as Trace’s continuity of [DELETED].” *Id.* In the SSA’s view, “[t]he magnitude of this premium far outweighs the relative value of the merits associated with the identified strengths.” *Id.*

The SSA considered the difference in the two offerors’ staffing solutions “inconsequential as both MicroTech and Trace provided a technically adequate staffing approach with a detailed description of how it would accomplish the PWS requirements.” *Id.* at 13. Notwithstanding that Trace proposed more personnel at a lower price than the incumbent, the SSA expressed confidence in the “realism analysis performed for all offerors,” concluding “that Trace’s proposed price is well within the parameters of a realistic price proposal.” *Id.* 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.³

DISCUSSION

MicroTech asserts that the Air Force unreasonably evaluated Trace’s professional employee compensation plan and the realism of Trace’s proposed non-professional direct labor rates. As explained below, we sustain the protest on both bases. The protester also contends that the agency failed to conduct a price risk analysis of Trace’s proposal required by the DFARS; the record does not contain the required price risk analysis, and we also sustain the protest on that basis. Lastly, MicroTech argues that Trace has unmitigable OCIs, that the agency’s conduct of discussions was misleading, and that the agency unreasonably evaluated MicroTech’s technical proposal; we deny those allegations.

³ 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).

Evaluation of Trace's Professional Employee Compensation Plan

A professional employee compensation plan is comprised of direct labor rates (salary) and fringe benefits. As discussed in some detail below, the FAR requires a comparison of the total proposed compensation to the total compensation provided by the incumbent, as well as a realism analysis of the proposed compensation plan. The record does not document the Air Force's conclusion that Trace's labor rates will enable the awardee to maintain program continuity, uninterrupted high-quality work, and the availability of competent professional staff. Nor does the record establish that the Air Force compared Trace's proposed fringe benefits to the incumbent's. The FAR requires a comparison of an offeror's total proposed compensation to the total compensation provided by the incumbent, the Air Force did not make that comparison, and we sustain the protest on that basis. Our analysis below discusses the protester's challenges to the agency's evaluation of Trace's direct labor rates and fringe benefits for professional employees.

Evaluation of Direct Labor Rates

MicroTech contends that the agency unreasonably compared Trace's proposed direct labor rates for professional personnel to market data instead of incumbent direct labor rates, as required by FAR provision 52.222-46. Comments at 4. The Air Force argues that its evaluation complied with the FAR and the solicitation. MOL at 30.

Provision 52.222-46 of the FAR requires agencies to assess offerors' ability to provide uninterrupted high-quality work and to evaluate offerors' understanding of the contract requirements. See *Guidehouse LLP; Jacobs Tech. Inc.*, B-420860 *et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 7; *Obsidian Sols. Grp., LLC*, B-416343, B-416343.3, Aug. 8, 2018, 2018 CPD ¶ 274 at 7. Where, as here, requirements are performed under an existing contract and then recompeted, FAR provision 52.222-46(b) requires an agency to determine whether a proposal "envision[s] compensation levels lower than those of predecessor contractors" by comparing proposed compensation levels to those of the incumbent. *Guidehouse LLP; Jacobs Tech. Inc.*, *supra*; *SURVICE Eng'g Co., LLC*, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 6-7. 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. *Id.* This 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). The comparison of an offeror's proposed professional compensation plan 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).

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. MOL at 28; AR, Tab 15, 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." AR, Tab 15, FOER at 7. 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 18, 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 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 15, 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 18, Trace Evaluation Report at 15.

As discussed above, the Air Force issued an 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 13, Trace IN Price Corrected at 2. Trace upwardly adjusted most of these direct rates, while one remained more than eight percent below the incumbent rate; that rate was [DELETED] percent below the incumbent rate. *Id.* at 3. 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."⁴ *Id.* at 4.

We conclude the record does not establish the reasonableness of the agency's evaluation under FAR provision 52.222-46(b). The provision requires that "proposals envisioning compensation levels lower than those of predecessor contractors for the same work [] be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees." FAR provision 52.222-46(b). The Air Force considered the eight

⁴ With regard to that 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.* at 4. The agency considered the IN resolved. *Id.*

percent benchmark a “realistic range” and determined any direct labor rate within that range to be realistic. AR, Tab 13, Trace IN Price Corrected at 4. The conclusory statement that the benchmark represented a “realistic range” is insufficient documentation to show that the Air Force’s evaluation met the requirements of FAR provision 52.222-46(b). In other words, while the record contains a conclusory statement purporting to meet the requirements of FAR provision 52.222-46(b), the record does not provide an evaluation for why labor rates within that eight percent benchmark, which are below market or incumbent rates, would maintain program continuity, uninterrupted high-quality work, and competent employee availability, which is the required showing under the FAR. Accordingly, we sustain the challenge to the challenge to the reasonableness of the agency’s evaluation of Trace’s proposed direct labor rates under FAR provision 52.222-46(b).⁵

Evaluation of Fringe Benefits

MicroTech claims that its professional compensation plan proposed a [DELETED] percent fringe benefit rate compared to Trace’s proposed rate of [DELETED] percent, “indicating to the Agency that MicroTech’s incumbent fringe benefits were measures better.” Comments at 15; *compare* AR, Tab 18, Trace Evaluation Report at 12 *with* AR, Tab 16, MicroTech Evaluation Report at 20. The protester argues that the agency provides no evaluation, and Trace provides no rationale, to substantiate how “significantly worse benefits” could “retain the incumbent staff and ensure project continuity.” Comments at 15. The agency contends that “FAR [provision] 52.222-46 does not specify how fringe benefits should be evaluated” and that the solicitation required only that the agency evaluate fringe benefits for the coverage of “basic national benefit categories to include, but not limited to: life insurance, disability, medical insurance, retirement/401k plans, and paid time off.” Supp. AR at 26-27, 30, *quoting* FOPR at 14.

In recompletions like the procurement here--where there is a requirement to evaluate professional employee compensation plans--the agency has an obligation to determine whether the compensation proposed is lower than incumbent compensation. *Guidehouse LLP; Jacobs Tech. Inc., supra* at 11. Where the agency did not have access to the incumbent salary and fringe benefit information, we have found evaluations reasonable where an agency developed its own baseline against which to evaluate proposed professional compensation, such as market rates. *Id.* at 12. Where an agency with access to the incumbent fringe benefits merely evaluates proposed fringe benefits as standard for the market, the evaluation is unreasonable, in as much FAR provision 52.222-46 instructs agencies to compare total proposed compensation levels, *i.e.*, “salaries and fringe benefits,” to predecessor contracts in recompletions.

⁵ As the protester notes, Trace proposed to “capture as many of the incumbent personnel on-site at contract award as possible.” Comments at 16, *quoting* 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.

SURVICE Eng'g Co., LLC, supra at 7 n.7. As the agency notes, the solicitation also advised offerors that the agency would evaluate fringe benefits to ensure coverage of “basic national benefit categories to include, but not limited to: life insurance, disability, medical insurance, retirement/401k plans, and paid time off.” FOPR at 14.

These two provisions ensure that proposed fringe benefits meet two distinct requirements. The FAR requires a comparison of proposed fringe benefit rates to the incumbent rate, and the solicitation requires proposed fringe packages to contain specific benefits. MicroTech does not contend that the Air Force failed to perform the solicitation’s required evaluation. In fact, the Air Force performed the evaluation required under the solicitation and considered an offeror’s proposed fringe benefits to be “sufficient” if the offeror’s proposal “detail[ed] basic national benefit categories and proposed a rate that is considered adequate.” AR, Tab 18, Trace Evaluation Report at 15. Such a finding, however, does not satisfy the requirements of FAR Provision 52.222-46. *SURVICE Eng'g Co., LLC, supra* (finding unreasonable an agency determination that fringe benefits were “standard” for the “market and region” when FAR provision 52.222-46 instructs agencies to compare total proposed compensation levels, i.e., “salaries and fringe benefits,” to predecessor contracts in recompetitions). The record does not contain a comparison of proposed fringe benefits to incumbent fringe benefits. The Air Force’s evaluation of proposed fringe benefits thus did not conform to the requirements of the FAR, and we sustain the protest on this basis.

Price Realism Analysis of Non-professional Labor Rates

MicroTech also challenges the Air Force’s evaluation of the realism of Trace’s proposed direct labor rates for non-professional personnel. The protester contends that, after Trace revised its direct rates in response to agency INs, the awardee still proposed 21 direct rates below incumbent rates, the vast majority of which were more than [DELETED] percent below incumbent rates. Comments at 8-9, *citing* AR, Tab 18, Trace Evaluation Report at 30-31. (The record shows that the actual figures were 17 direct rates below the incumbent rate, with seven of them being more than [DELETED] percent below. See AR, Tab 18, Trace Evaluation Report at 30-31.) The Air Force maintains that its price realism analysis reasonably relied on a comparison of proposed direct labor rates to market data, rather than historic rates. Supp. AR at 23.

Where, as here, a solicitation contemplates the award of a fixed-price contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring an offeror’s understanding of the requirements or to assess the risk inherent in an offeror’s proposal. *NTT DATA Servs. Fed. Gov’t, Inc.*, B-417235.2, B-417235.3, Jan. 2, 2020, 2020 CPD ¶ 19 at 3. The depth of an agency’s price realism analysis is a matter within the sound exercise of the agency’s discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Id.* Further, it is axiomatic that an agency’s price evaluation must, at a minimum, comport with the terms of the solicitation. *Id.* The solicitation provided for a comparison of “proposed [non-professional] direct rates to historical incumbent rates and/or market rates to determine the realism of the proposed rates” and to “confirm the offeror’s understanding of the requirements to

successfully perform these services.” FOPR at 14. That analysis was “[i]n addition to the analyses as described in FAR 15.404-1(b).” FOPR at 14.

Initially, the Air Force’s evaluation of the realism of Trace’s proposed direct labor rates for non-professional personnel compared proposed rates to both incumbent rates and market data. See AR, Tab 18, Trace Evaluation Report at 27-30. When analyzing the awardee’s revised rates, the agency’s focus changed to a comparison of the protester’s direct labor rates to market data alone. See *id.* at 30. The Air Force explained that “[g]reater consideration was placed on the market data rates as the reliance on historical direct rates does not necessarily accurately convey a realistic labor rate analysis on its own.” *Id.* The agency further explained that “[c]ompetition by its nature compels Offerors to submit prices that are more economical that typically lead to greater savings to the Government”; consequently, “[p]lacing higher emphasis on these market rates is likely a better reflection and better data point to compare proposed prices.” *Id.* After revisions, two labor categories were below both the incumbent historical rate and market data. *Id.* at 25; see AR, Tab 18, Trace Evaluation Report at 30-31. The Air Force evaluation noted that, while direct rates for some positions “may appear lower,” “the total compensation for these positions is in line with industry standards.” AR, Tab 18, Trace Evaluation Report at 31. The Air Force concluded that “the total compensation for these positions is in line with industry standards” because the “additional compensation offsets the lower direct rate and is considered realistic overall.” *Id.* at 31-32.

MicroTech contends that this “mid-evaluation change” from a comparison of direct labor rates to incumbent rates and market data to market data alone “ignores price realism policy dictates, ignores the FOPR instruction, and ignores the Agency’s stated evaluation methodology.” Comments at 5. The protester argues that, following the interchanges and the Air Force’s determination that the awardee’s rates were realistic, “[n]early 90 [percent] of the revised rates fall below historical incumbent rates-- meaning that, after revisions, 47 proposed full-time employees would be paid less than incumbent rates.” *Id.* at 7. MicroTech asserts that the Air Force “specifically stated it would compare the proposed rates to historical incumbent rates, but then completely disregarded historical incumbent rates during the evaluation stage.” *Id.* at 9, *citing* FOPR at 13-14. That is inaccurate; the solicitation provided that, in evaluating the realism of non-professional direct labor rates, the agency would compare those rates “to historical incumbent rates and/or market rates.” FOPR at 14. MicroTech’s repeated assertions that the agency failed to follow the evaluation scheme announced in the FOPR because the Air Force settled on a comparison of the proposed rates to market data fails to state a valid basis of protest; it is factually incorrect because it misstates the solicitation evaluation requirement.

Alternatively, MicroTech asserts that the agency’s evaluation unreasonably relied on an apples-to-oranges comparison. Specifically, the protester argues that the agency’s concerns with the awardee’s apparently low direct labor rates were assuaged by the consideration of Trace’s proposed fringe benefits, which were a separate component of total proposed compensation. Comments at 11. The record confirms that the agency

determined some of Trace's proposed direct labor rates for nonprofessional employees realistic based on a comparison of the combination of Trace's direct labor rate and fringe benefits to the incumbent labor rate alone. See AR, Tab 18, Trace Price Evaluation Report at 32 (noting that "[t]he additional compensation [of fringe benefits] offsets the lower direct rate and is considered realistic overall"). This was unreasonable, the protester argues, because the incumbent contractor also provided fringe benefits in addition to a higher direct labor rate. Comments at 11. MicroTech argues that "Trace's attempt to make an unrealistic direct rate realistic by adding the cost of benefits does not change the fact that [Trace's] underlying rates are unrealistic." *Id.* We agree. Simply put, the proper comparison was the proposed labor rate to the incumbent labor rate; by adding proposed fringe benefits to the proposed labor rate, the agency unreasonably converted an apples-to-apples comparison into a proverbial apples-to-oranges one. We sustain the protest on this basis.⁶

Price Risk Evaluation Under SPRS

As noted above, the solicitation contained DFARS provision 252.204-7024, which requires a contracting officer to utilize SPRS in evaluating a proposal's "price risk." AR, Tab 5, FORP attachs., attach, 3, provisions and clauses at 99. MicroTech contends that the Air Force failed to perform that required evaluation. Supp. Protest at 4. MicroTech argues that, if the agency had evaluated the prices in SPRS, the Air Force "would have known that Trace's proposed price was **far lower** than the historical prices paid for the CAOC contract" and that Trace's proposed price therefore represented "significant price risk for the Government." *Id.*

Because this is a relatively new requirement, GAO requested the parties to brief the mechanics of the DFARS risk assessment for services. Email from GAO to Parties, Dec. 29, 2024. The Air Force provided the following explanation. The price risk assessment in SPRS "calculates an 'Expected Range' based on the population of historical prices for a particular item." Supp. AR at 30, *citing* <https://www.sprs.csd.disa.mil/faqs.htm#score>. For the price risk assessment for services contracts, such as the CAOC effort, the Air Force contends that SPRS does not contain that data. Supp. AR at 30. While the term "service" is used in DFARS provision 252.204-7024(c)(2), the Air Force argues that "the search functionality in SPRS as it presently exists only allows for combined price/item risk reports with product codes, stock numbers, manufacturing codes, etc. [and that] [n]one of these data points exist for services." *Id.* The agency notes that the DFARS provides that "[t]he Contracting Officer may consider any other available and relevant information when evaluating a quotation or an offer." *Id.*, *quoting*

⁶ The Air Force also determined some of Trace's proposed professional direct labor rates realistic based on a comparison of the combination of Trace's direct labor rate and fringe benefits to the incumbent labor rate alone. AR, Tab 13, Trace IN Price Corrected at 4 (noting that "the additional compensation provided by [Trace] offsets the lower direct rate and is considered realistic overall"). For that reason, we sustain the challenge to the reasonableness of the agency's realism analysis of professional direct labor rates.

DFARS provision 252.204-7024(e). The Air Force argues that it “relied on other available and relevant information in accordance with its evaluation criteria stated at paragraphs 4.3.2-4.3.2.2 as SPRS does not currently produce information the provision states should be considered as it pertains to services.” Supp. AR at 31. Specifically, the agency says that it “relied on price analysis techniques at FAR 15.404-1 in accordance with the DFARS guidance ([Procedures, Guidance, and Information] 204.76, para. (e)(1))^[7].” Supp. AR at 31.

As discussed above, we sustained MicroTech’s challenges to the realism of Trace’s non-professional direct labor rates because we found the evaluation did not conform to procurement law and regulation. 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.

Trace Organizational Conflicts of Interest

MicroTech argues that a former high ranking Air Force official, whom we refer to as Mr. X, provided Trace with confidential agency information. Comments at 19. The protester also contends that two former employees of a MicroTech subcontractor, whom we refer to as Messrs. Y and Z, improperly shared confidential MicroTech information with Trace. We address both allegations and find neither provides a basis on which to sustain the protest.

The FAR requires that contracting officers identify and evaluate potential OCIs and directs contracting officers to avoid, neutralize, or mitigate potential significant conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. The primary responsibility for determining whether an organizational conflict of interest is likely to arise--and the resulting appropriate action--rests with the contracting agency. FAR 9.504; *MANDEX, Inc.*, B-421664 *et al.*, Aug. 16, 2023, 2023 CPD ¶ 201 at 4. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition. FAR 9.505(b); 9.505-4; *MANDEX, Inc.*, *supra* at 6. As the FAR makes clear, the concern regarding this category of OCI is preventing the unfair competitive advantage that a firm may gain based on its possession of “[p]roprietary information that was obtained from a Government official without proper authorization,” or “[s]ource selection information . . . that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.” FAR 9.505(b); *MANDEX, Inc.*, *supra*.

Mr. X, the Former Air Force Official

⁷ See https://www.acq.osd.mil/dpap/dars/pgi/pgi_hm/current/PGI204_76.htm.

Mr. X retired from active duty with the Air Force on or about November 15, 2019, or roughly 5 years prior to the disputed contract award. MOL at 20. The protester asserts that Mr. X provided the awardee with competitively useful nonpublic information through his consulting role with GovCIO--a proposed Trace subcontractor. Protest at 19. MicroTech thus asserts that Trace has an unmitigable unequal access to information OCI. *Id.*

The Air Force argues--and MicroTech concedes--that GovCIO is not, in fact, a Trace proposed subcontractor for the current requirement.⁸ Mr. X was therefore not involved in the preparation of Trace's proposal for this requirement through a consultant relationship with a proposed Trace subcontractor. Alternatively, MicroTech asserts that a handful of unremarkable social media postings demonstrate that "Trace has maintained its relationship with [Mr. X] and continued to utilize him for the current procurement." Resp. to Req. for Partial Dismissal at 5. MicroTech contends that it "provided multiple public-facing comments and posts showing that Mr. [X] maintained consistent communication with top leadership at Trace and continued to meet in person with these individuals during critical stages of the FOPR." Comments at 20, *citing* MOL attaches. 1-6.

The Air Force asserts that screenshots of the communications between Mr. X and Trace "clearly show" "simple pleasantries exchanged between individuals over social media who likely once worked together (a fact the Agency does not dispute), and the prospect that they might cross paths at a conference they both planned to attend." MOL at 21, *referencing* attaches. 1-6 (showing screenshots of social media posts that the protester claims provide evidence that Mr. X assisted Trace with the preparation of its proposal). The first two Air Force screenshots show Trace announcing its award of the CAOC re-compete and Mr. X offering a one-line congratulations to a Trace vice president and "Team Trace." MOL, attaches. 1 & 2. In the next two screenshots, Mr. X posts his plans to attend the Rocky Mountain Cyberspace Symposium (RMCS), and the same Trace vice president posts her plans to attend the same conference. *Id.* at attaches. 3-4. In the following two screenshots, Mr. X announces a change in employment, and the Trace vice president replies: "Congratulations, Sir! Looking forward to connecting at RMCS." *Id.* at attaches. 5-6.

MicroTech suggests no rationale for how these pleasantries morph into an unequal access to information OCI. See Comments at 20. In fact, the exchanges are indicative of people not in close contact and who are not actively collaborating. We agree with the agency that the social media posts demonstrate nothing more than continuing cordiality among people who have worked together over the years, occasionally meet in person at industry conferences, and who congratulate each other on their professional successes. See MOL at 20. The posts contain no suggestion that Mr. X assisted Trace in the preparation of its proposal.

⁸ Resp. to Req. for Partial Dismissal at 3 n.1 (noting that "MicroTech withdraws its contention that GovCIO was a subcontractor of Trace for purposes of the FOPR").

Messrs. Y and Z

MicroTech also contends that Messrs. Y and Z “actively disclosed MicroTech’s confidential and proprietary information along with project-sensitive details to Trace in connection with the FOPR.” Comments at 20. The Air Force argues that the protester alleges a private dispute between parties, and that GAO will not consider such disputes absent evidence of government involvement. MOL at 27.

Our Office has recognized that, “where information is obtained by one firm directly from another firm . . . this essentially amounts to a private dispute between private parties that we will not consider absent evidence of government involvement.” *CymSTAR, LLC*, B-422576, July 31, 2024, 2024 CPD ¶ 172 at 8; *Management Scis. for Health*, B-416041, B-416041.2, May 25, 2018, 2018 CPD ¶ 197 at 5.

Mr. Y is a former employee of a MicroTech subcontractor for the incumbent requirement and a proposed subcontractor for this competition. Protest at 20. The protester asserts that, since leaving the employment of the protester’s subcontractor, Mr. Y “violated multiple confidentiality agreements by sharing privileged information about the CAOC contracts.” *Id.* Mr. Z is a former employee of the same subcontractor. *Id.* at 21. MicroTech alleges that, after leaving the subcontractor’s employment, Mr. Z “held several discussions with Trace, during which he unlawfully divulged project-sensitive information prior to proposal submission.” *Id.* MicroTech contends that “[t]he information revealed to Trace through [Messrs. Y and Z] unlawfully placed Trace at an unfair competitive advantage in the award of the FOPR, and results in an unmitigable OCI.” *Id.* MicroTech does not assert any government involvement in the alleged improper dissemination of MicroTech proprietary information by these two individuals, and the record suggests none. See *id.* at 18-22.

The protester objects to the agency’s characterization of the conflict as a private dispute, contending that the actions of Messrs. Y and Z “do not constitute just a private dispute where they impact a public procurement.” Comments at 22. In the protester’s view, a private dispute refers to a conflict between non-governmental entities; the matter is nevertheless of concern to the allegedly aggrieved party precisely because it involves a “public procurement.” There is no evidence in the record that the assistance Messrs. Y and Z allegedly provided Trace in the preparation of its proposal is anything other than a dispute between private parties. In this context, the record does not reflect, and the protester does not assert, there was any government involvement in the alleged provision of assistance. Thus, the protester has not established the existence of an OCI under these facts.

In summary, Mr. X did not consult to a Trace subcontractor regarding proposal preparation for this procurement, and the incidental social contracts Mr. X had with a Trace vice president do not suggest any involvement of Mr. X in the crafting of Trace’s successful proposal. If Messrs. Y and Z improperly divulged confidential Trace information, they did so without government involvement. The record thus provides no

support for the protester's contention that Trace had unmitigable unequal access to information OCIs, and we deny these allegations.

Conduct of Discussions

MicroTech contends that the agency conducted misleading discussions with the protester. Comments at 27. The protester argues that the Air Force "applied a completely different standard to Trace in its evaluation by completely renegeing on the importance of price in relation to its understanding of the requirements of the PWS." *Id.* MicroTech asserts that it "was not aware that evaluation metrics had changed, and in responding to the Agency's INs, abided by the requirements of the FOPR." *Id.* at 27-28. Moreover, MicroTech contends, "[t]he Agency induced MicroTech to needlessly raise its prices for the two labor categories marked low" because "the Agency had no real concerns with multiple labor categories that were low since it rated Trace's revised direct rates to be satisfactory, despite being up to [DELETED] [percent] below historical incumbent rates and [DELETED] [percent] below market rates." *Id.* at 28. The protester argues that its increased staffing levels were "aimed to quell the Agency's seemingly serious concern for MicroTech's staffing levels and salary rates." *Id.* at 27.

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not generally govern task and delivery order competitions conducted under FAR part 16, such as the procurement for the task order here. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419271.4, B-419271.7, Apr. 14, 2021, 2021 CPD ¶ 169 at 9. Section 16.505 of the FAR does not establish specific requirements for discussions in a task order competition; nonetheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. *Id.*

This is, in essence, not a challenge to the conduct of discussions but a reframing of the challenge to the agency's price evaluations. MicroTech argues that the evaluation of proposed labor rates was unreasonable but does not identify anything misleading, unequal, or unfair with regard to the Air Force's conduct of discussions with MicroTech. Similarly, MicroTech suggests no rationale for why the Air Force's discussions with the protester regarding staffing levels were unfair, misleading, or unequal. See Comments at 27. We addressed above the reasonableness of the Air Force's evaluation of the professional employee compensation plans and non-professional direct labor rates, and we sustained MicroTech's challenges on the basis that the Air Force's evaluations were unreasonable. Beyond that, however, the protester makes no colorable claim that the agency's conduct of discussions was unfair or misleading, and this allegation is denied.

Evaluation of MicroTech's Technical Proposal

The Air Force assigned MicroTech's proposal three strengths⁹ under the management and staffing plan factor for proposing a [DELETED]. AR, Tab 16, MicroTech Evaluation Report at 3-4, 6-7. MicroTech argues that the Air Force unreasonably failed to assign several additional strengths and significant strengths to the protester's proposal. Comments at 16-19. The Air Force contends it reasonably based the assignment of strengths on the criteria in the FOPR. MOL at 35.

As stated above, this task order competition was conducted pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition 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. *Qwest Gov't Servs.*, *supra* at 4. In reviewing protests of an award in 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 the agency's evaluation of proposals or quotations, without more, is not sufficient to establish that an agency acted unreasonably. *Id.*

MicroTech broadly asserts that its proposal "should have received multiple 'Strengths' under Factor 4 [management and staffing plan] because [MicroTech] has a 10-year track record of performing high-quality services in support of CAOC." Protest at 27, *citing* exh. 9, MicroTech Technical Proposal at 12 (describing protester's lengthy past performance). The Air Force argues that it did not arbitrarily assign strengths based on an offeror's incumbent status, and, moreover, the agency did not assign strengths based on past performance, which was not an evaluation factor. MOL at 35, *citing* FOPR at 6-8. Rather, the agency argues, it evaluated technical experience--factor 2--on a pass/fail basis. MOL at 35; see FOPR at 6 (noting that technical experience was one of three factors evaluated on a pass/fail basis).

MicroTech fails to make a threshold showing that its proposal merits additional strengths and significant strengths because the protester does not articulate: the solicitation standard; what portion of the protester's proposal exceeds that standard; and why the agency unreasonably concluded that, although the protester's proposal exceeded the requirement, it was not to the advantage--or considerable advantage--of the government during contract performance. See Comments at 16-19.

MicroTech bolsters its claim that its proposal deserved additional strengths with a favorable comparison of MicroTech's proposal and experience to that of other offerors. See *id.* at 17. For example, the solicitation required the management plan to

⁹ The solicitation defines 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." FORP at 12. A significant strength is defined as "[a]n aspect of an Offeror's proposal with appreciable merit or will exceed specified performance or capability requirements to the considerable advantage of the Government during contract performance." *Id.*

“demonstrate a viable approach to recruit, hire, train and retain personnel to satisfy all task order requirements.” FORP at 7. MicroTech argues that it “provides a far greater and more robust benefits package than Trace,” and that those benefits aid in the recruiting and hiring of additional personnel. Comments at 17. The yardstick for assigning strengths and significant strengths is not a comparison of proposals; the Air Force, instead, would assign significant strengths--and strengths--when as aspect of an offeror’s proposal with appreciable merit exceeded requirements to the considerable advantage--or advantage--of the government. See FOPR at 12. Moreover, the agency argues that “MicroTech’s ability to recruit, hire, and retain personnel are expectations that enable MicroTech to meet requirements, which does not meet the definition of a strength.” MOL at 35.

Overall, instead of refuting the agency’s claim that past performance and technical experience are not relevant to the evaluation of the management and staffing plan factor, the protester recounts its past successes as the incumbent contractor, compares its proposal to that of other offerors, and reiterates that MicroTech’s “experience as the incumbent” warranted the assignment of additional proposal strengths. Comments at 18. Such claims do not demonstrate that the evaluation was unreasonable, and this allegation is without merit.

RECOMMENDATION

As detailed above, we find the agency’s evaluation of professional employee compensation plans and price realism analysis of non-professional direct labor rates 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 MicroTech be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d)(1). MicroTech 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