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# Decision

**Matter of:** Valkyrie Enterprises, LLC

**File:** B-415633.3

**Date:** July 11, 2019

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## DIGEST

1. Protest challenging the agency’s cost realism evaluation is sustained where the agency’s evaluation failed to reasonably evaluate the protester’s proposed direct labor rates.
  2. Protest asserting that the awardee intended to perform an improper bait and switch is dismissed where the protester fails to allege “baiting,” that is, replacing proposed personnel with less qualified employees.
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## DECISION

Valkyrie Enterprises, Inc.,<sup>1</sup> a small business of Virginia Beach, Virginia, protests the issuance of a task order to The McHenry Management Group, Inc. (McHenry), a small business of Chesapeake, Virginia, under request for proposals (RFP) No. N00024-16-R-3157, which was issued by the Department of the Navy to provide engineering, logistics and program support services for the Naval Surface Warfare Center, Philadelphia Division. The protester contends that the agency conducted a flawed cost realism evaluation, that the awardee does not intend to provide the key personnel proposed, and that there were errors in the agency’s best-value tradeoff decision.

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<sup>1</sup> The proposal was submitted by Valkyrie Enterprises, LLC, which converted from a Virginia limited liability company to Valkyrie Enterprises, Inc., a Virginia corporation, effective August 8, 2018. Protester Supp. Comments at 1 n.1.

We sustain the protest.

## BACKGROUND

On November 18, 2016, the Navy issued the RFP to holders of the Navy's SeaPort Enhanced multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract pursuant to Federal Acquisition Regulation (FAR) part 16. RFP at 1, 56. The solicitation was set aside for small businesses in the contract's northeast zone.<sup>2</sup> Id. at 2, 4; Agency Report (AR), Tab 9, Business Clearance Memorandum (BCM) at 1.

The RFP anticipated the issuance of cost-plus-fixed-fee, level-of-effort task order with a 12-month base period and four 12-month option periods to the offeror whose proposal represented the best value to the agency, considering the following three factors in descending order of importance: technical, past performance, and cost/price. RFP at 2, 56, 59. The technical factor contained three equally-important subfactors: personnel, management approach, and corporate experience. Id. at 56. The solicitation permitted the agency to make upward adjustments to costs considered unrealistic in order to arrive at the agency's most probable cost. Id. at 59. The agency intended the most probable cost to be used in the best-value tradeoff decision. Id. As the evaluations of proposals' non-cost factors equalized, cost was to become "more of a deciding factor in selecting the best value." Id.

The RFP here specified, by year, the level of effort for each of 15 labor categories. Id. at 4-5. It provided for an annual level of effort of 148,966 direct labor hours, or 744,830 direct labor hours over the life of the contract. Id. Six labor categories were characterized as key personnel positions. Id. For each of the proposed key personnel not currently employed by an offeror, offerors were required to submit a resume and letter of intent affirming the individual's intent to accept employment within 30 days of task order issuance. Id. at 16.

The agency received proposals from five firms prior to the November 30 closing date, including those of Valkyrie and McHenry. Contracting Officer's Statement (COS) at 5. After an initial evaluation, discussions, and final proposal revisions, the Navy made award to McHenry on September 29, 2017. AR, Tab 9, BCM at 4. After Valkyrie received its debriefing, it filed a timely protest at GAO on October 30. The Navy took corrective action, and our Office dismissed the protest as academic. Valkyrie Enters., Inc., B-415633, Dec. 29, 2017 (unpublished decision).

On February 14, 2018, the Navy established a competitive range consisting of Valkyrie and McHenry and opened discussions with the two firms. AR, Tab 9, BCM at 4; COS at 6. On August 22, the Navy advised Valkyrie that there were "no weaknesses or deficiencies in [its] technical proposal" but that "[a] cost realism analysis was performed

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<sup>2</sup> Valkyrie was the prior incumbent on this effort; there is no firm currently performing the tasks described in this solicitation. RFP at 2; Navy Clarification, June 6, 2019.

and [its] proposed costs of \$31,342,307.50 [were] increased to \$31,841,773.22 (Evaluated cost).” AR, Tab 2, Navy August 2018 Valkyrie Final Proposal Revisions (FPR) Letter at 1. The Navy’s letter requested submission of FPRs by August 28. Id. at 2.

Rather than proceed to award on the basis of the August 2018 FPRs, the Navy reopened discussions in February 2019 after discovering an error in its cost realism methodology. AR, Tab 5, February 2019 Discussions Letter at 1-2. On February 8, 2019, the Navy advised Valkyrie and McHenry that the agency was using a new methodology to evaluate whether an offeror’s costs were realistic. Id.; AR, Tab 6, McHenry February Discussions Letter at 1-2. Under this revised approach, “[p]roposed direct labor rates supported by payroll data, contingency hire letters, Forward Pricing Rate Agreements (FPRAs), and subcontractors proposed on a Labor Hour basis were considered to be realistic.” Id. If an offeror’s proposed direct labor rate was considered to lack such support, the rate was compared to the 25<sup>th</sup> percentile of the rate for that labor category provided on the website salary.com. Id. If an offeror’s unsupported proposed rate fell below the salary.com 25th percentile rate, the Navy raised the rate to the salary.com rate for the cost realism evaluation. Id.

In the February 2019 discussions letter, the Navy provided Valkyrie with the salary.com 25th percentile hourly and annual salary rates for the solicitation’s job categories. Id. at 2. The agency also advised Valkyrie that the protester’s proposed labor rates for new hires in 10 positions were considered to be unrealistically low and were being raised to the salary.com rates. Id. In addition, as relevant to this protest, the Navy informed Valkyrie that the agency was similarly increasing the new hire direct labor rates for [DELETED] and [DELETED], two of Valkyrie’s subcontractors. Id. at 6, 8. The agency requested FPRs from Valkyrie and McHenry by the revised deadline of February 15. Id. at 9.

In response to the Navy’s discussions letter, Valkyrie raised its direct labor rates for all new hires. AR, Tab 7, Valkyrie FPR at 3-4. For some positions, Valkyrie used the salary.com 25th percentile rate; rates for others positions were substantiated as an average of the salary.com 25th percentile rate and rates paid to several current employees in that position. Id. In its FPR, Valkyrie also updated its payroll information and included a new spreadsheet in its proposal with an hourly rate analysis to explain its calculations. Id. at 1, 3. In addition, Valkyrie included payroll data relating to subcontractor [DELETED] in the updated FPR and reiterated that its subcontractor [DELETED] new hire rates were based on Payscale, a national compensation survey. Id. at 7,9. The protester defended its revised rates as competitive in light of the local labor market and Valkyrie’s fringe benefits package. Id. at 5. As a result, Valkyrie’s total proposed cost rose by approximately \$3.5 million.

The agency evaluated final proposals as follows:

	<b>McHenry</b>	<b>Valkyrie</b>
<b>Technical – overall</b>	<b>Acceptable</b>	<b>Good</b>
<i>Subfactor – Personnel</i>	<i>Good</i>	<i>Outstanding</i>
<i>Subfactor – Management Approach</i>	<i>Acceptable</i>	<i>Acceptable</i>
<i>Subfactor – Corporate Experience</i>	<i>Acceptable</i>	<i>Good</i>
<b>Past Performance</b>	<b>Neutral/Unknown</b>	<b>Substantial Confidence</b>
Proposed Cost	\$29,985,386	\$33,890,554 <sup>3</sup>
+ Adjustments	+\$2,901,748	+\$3,718,286
<b>Evaluated Cost</b>	<b>\$32,887,134</b>	<b>\$37,608,840</b>

AR, Tab 18, Source Selection Decision (SSD) at 4, 14; Protest at 6.

Despite Valkyrie’s new hire rate increases, in each instance where Valkyrie or the two subcontractors proposed a new hire rate below the salary.com 25th percentile rate, the Navy increased Valkyrie’s or the subcontractor’s rate to the salary.com rate. AR, Tab 13, Cost Evaluation at 5-6. These upward adjustments resulted in an increase of \$1,155,501 to Valkyrie’s evaluated cost, as well as similar increases of \$317,437 and \$1,573,963 for Valkyrie’s subcontractors [DELETED] and [DELETED], respectively. AR, Tab 12, Initial Cost Evaluation at 15. These increases contributed to the approximately \$3.7 million upward adjustment that the Navy made to Valkyrie’s proposal. AR, Tab 13, Cost Evaluation at 2.

In conducting the best-value tradeoff decision, the source selection authority determined that the superiority of Valkyrie’s proposal under the technical and past performance factors did not warrant an approximately 14 percent cost premium. AR, Tab 18, SSD at 14. The Navy selected McHenry as the offeror whose proposal represented the best value to the agency. Id. This protest followed.<sup>4</sup>

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<sup>3</sup> This number is rounded. Protest at 6; AR, Tab 7, Valkyrie FPR at 10. The agency’s cost realism evaluation, BCM, and source selection decision all erroneously use Valkyrie’s interim August 2018 cost instead of its February 2019 final cost. The Navy explains that these were typographical errors. COS at 27 n.19. The record reflects that the agency evaluated Valkyrie’s 2019 FPR, including the underlying labor rates. See, e.g., AR, Tab 8, Cost Evaluation at 6-7.

<sup>4</sup> This procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts issued within the Department of Defense, since the awarded value of the task order at issue exceeds \$25 million. 10 U.S.C. § 2304c(e)(1)(B).

## DISCUSSION

Valkyrie challenges as unreasonable the Navy's upward adjustments to Valkyrie's new hire direct labor costs for the positions of senior technical writer and logistician. Protest at 10-11. The protester also challenges the agency's similar increases to the rates for two of its subcontractors, [DELETED] and [DELETED]. Id. at 13. In addition, Valkyrie contends that McHenry's proposed key personnel were not available and that the agency's best-value tradeoff decision was unreasonable.<sup>5</sup> Id. at 8-9. For the reasons that follow, we sustain Valkyrie's protest of the agency's cost realism evaluation. We also find that Valkyrie failed to adequately challenge the agency's key personnel evaluation and dismiss this protest ground.

### Cost Realism

Valkyrie argues that, in concluding that Valkyrie's labor rates for new hire senior technical writers and logisticians were unrealistic, the Navy improperly overlooked the protester's current compensation rates and updated documentation, including payroll data. Protest at 10.

### Timeliness

As an initial matter, the Navy requests dismissal of Valkyrie's challenge to the cost realism evaluation as untimely. Memorandum of Law (MOL) at 8. The agency argues that its February 2019 discussions letter advised Valkyrie of revisions to the agency's intended cost realism evaluation methodology, and that Valkyrie's cost realism challenges relate to the substance of this methodology and are therefore time-barred. Id. at 7-9. The agency asks our Office to rely on Learjet, Inc., B-274385 et al., Dec. 6, 1996, 96-2 CPD ¶ 215 at 3-4 (protest ground dismissed as untimely where protester was advised during discussions of the agency's intended evaluation) and PM Servs. Co., B-310762, Feb. 4, 2008, 2008 CPD ¶ 42 at 3 (same), for the position that the cost realism evaluation methodology provided in the February 2019 discussions letter clearly advised Valkyrie of the agency's intended approach. Id. at 8-9. Valkyrie asserts that it does not raise an untimely challenge to the agency's amended methodology, but rather that, under the revised cost realism evaluation, the agency unreasonably rejected its proposed new hire rates. Protester Comments at 11 n.7, 12. In essence, the parties disagree as to whether the agency's cost realism evaluation methodology, as presented in the February 2019 discussions letter, clearly advised Valkyrie that the agency intended to apply the salary.com 25th percentile rates as a floor for new hires rates.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2,

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<sup>5</sup> The protester raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's additional assertions and find that none provides an independent basis to sustain the protest.

Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. Furthermore, we defer to the plain meaning of the provision. See ManTech Advanced Sys. Int'l, Inc., B-416734, Nov. 27, 2018, 2018 CPD ¶ 408 at 7.

As mentioned above, the Navy advised Valkyrie during discussions that the Navy would use a new cost realism evaluation methodology, rather than the methodology set forth in the solicitation. The discussions letter explained the approach as follows:

Proposed direct labor rates supported by payroll data, contingency hire letters, Forward Pricing Rate Agreements (FPRAs), and subcontractors proposed on a Labor Hour basis were considered to be realistic. Proposed rates that were not supported by payroll data, contingency hire letters, an FPRA, invoiced and incurred rates, or proposed on a Labor Hour basis were compared to national salary data from <http://www.salary.com>. Proposed rates above the Salary.com 25th percentile were considered to be realistic. Rates below the 25th percentile of the Salary.com range were considered to be unrealistically low. The unrealistically low rates were adjusted upward to the 25th percentile of the Salary.com range in the Government cost realism analysis.

AR, Tab 5, February 2019 Discussions Letter at 1-2.

In the Navy's view, this protest is untimely because its letter advising offerors of the agency's intended cost realism evaluation methodology clearly advised that the salary.com 25th percentile rates constituted a floor for new hire rates and, accordingly, precluded Valkyrie from supporting its proposed new hire rates with its current payroll data. We disagree.

The agency's narrow interpretation is not consistent with the plain meaning of the provision, which does not exclude payroll data as documentary support for proposed new hire rates. ManTech Advanced Sys. Int'l, Inc., *supra*, at 7. In this regard, the revised cost realism methodology describes two categories of rates: those "supported by payroll data" or other actual data, and those "not supported by payroll data" or other actual data. AR, Tab 5, February 2019 Discussions Letter at 1-2. Neither this text nor any portion of the RFP distinguishes between the support allowed for rates for current employees and the support permitted for new hire rates. Furthermore, the Navy's request for dismissal does not explain how this cost realism methodology precludes the use of payroll or other actual data to support new hire rates.

In contrast, other portions of the solicitation instruct offerors that, "[t]o substantiate proposed labor rates, offerors and their subcontractors shall complete a Labor Rate Substantiation Table . . . and provide relevant substantiating documentation (example: payroll info, contingency hire letters, etc[.]) as is applicable." RFP at 50. These instructions to offerors are consistent with the plain meaning of the agency's revised

cost realism methodology, but not consistent with the agency's current interpretation of this language, which ignores payroll data for new hire rates. The agency's decision to exclude an offeror's existing payroll data as substantiation of its new hire rates is not described in the cost realism methodology, whether in the RFP or the discussions letter revisions.

Overall, we find that the revised cost realism language does not preclude an offeror from supporting its new hire rates with its current employee rates. While, the Navy contends that the discussions letter was sufficient to put the protester on notice of its planned cost realism evaluation methodology, its intended methodology is not consistent with the plain meaning of the text. The request for dismissal of this protest ground as untimely is denied. Anders Constr., Inc., B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3; HP Enter. Servs., LLC, B-409169.3, B-409169.4, June 16, 2014, 2014 CPD ¶ 179 at 7.

### Reasonableness

Next, we address Valkyrie's claim that the Navy improperly overlooked the new hire labor rate substantiation, *i.e.*, payroll data, provided in its proposal. Specifically, the protester contends that "it is unreasonable to insist on a high rate for new hires when the company has an established pay scale with existing, more experienced, long-term employees at lower rates." Protester Comments at 11 (emphasis omitted). Valkyrie asserts that the agency unreasonably found Valkyrie's new hire direct labor rates to be unsupported, leading the agency to use the salary.com rates instead.

Where an agency evaluates proposals for the award of a cost-reimbursement contract, the agency is required to perform a cost realism evaluation to determine the extent to which each offeror's proposed costs represent what the contract costs are likely to be. FAR §§ 16.505(b)(3), 15.404-1(d). Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970 *et al.*, Nov. 25, 2015, 2015 CPD ¶ 373 at 5 (considering FAR part 15 cost realism standards in a FAR part 16 task order procurement).

As discussed above, offerors were required to propose the exact labor mix and level of effort identified in the RFP; thus, firms' cost variations were largely tied to their direct labor rates and indirect cost rates. Where, as here, a cost-reimbursement contract's cost is driven in significant measure by labor costs, agencies are required to evaluate the offerors' direct labor rates to ensure that they are realistic. CALNET, Inc., B-413386.2, B-413386.3, Oct. 28, 2016, 2016 CPD ¶ 318 at 4; Prism Maritime, LLC, B-409267.2, B-409267.3, Apr. 7, 2014, 2014 CPD ¶ 124 at 12. The underlying policy consideration for such a requirement is that unless an agency evaluates the realism of the offerors' proposed direct rates of compensation (as opposed to its fully-burdened rates), the agency has no basis to determine whether or not those rates are realistic to attract and retain the types of personnel to be hired. *Id.*

While an agency's cost realism analysis need not achieve scientific certainty, the methodology employed must be reasonably adequate and provide some measure of

confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. Tantus Techs., Inc., B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 10. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based. TriCenturion, Inc.; Safeguard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 6.

Here, in each instance where Valkyrie proposed a new hire rate below the salary.com 25th percentile rate, the agency increased Valkyrie's rate to the salary.com rate. AR, Tab 13, Cost Evaluation at 5-6. The agency provided several bases for the upward adjustment, which we consider in turn.

First, the Navy found Valkyrie's new hire rates to be unrealistic because "Valkyrie did not propose any of the personnel for which payroll records were provided to perform any of [the] new hire hours." AR, Tab 13, Cost Evaluation at 7. Put another way, the Navy concluded that because current personnel could not be new hires, Valkyrie's current rates were irrelevant to its new hire rates. Id. ("[T]he labor categories listed above would be new hires, which would not be supported by payroll data for current employees."). The Navy's conclusion that payroll data from current employees cannot support new hire rates, without more explanation or justification, is unreasonable because it provides no logical basis for excluding this category of rates.<sup>6</sup> See Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970 et al., supra, at 10 (sustaining protest where agency's rate evaluation was unreasonable). Furthermore, it is inconsistent with the language of the revised cost realism methodology, which does not advise offerors that payroll data is impermissible support for new hire rates. See EFW Inc., B-412608, B-412608.2, Apr. 7, 2016, 2016 CPD ¶ 304 at 11-13 (sustaining protest where agency's price realism analysis was inconsistent with the solicitation).

Next, the Navy concluded that Valkyrie's new hire rates were unrealistic because the sample size of Valkyrie's current employees did not clearly indicate whether it reflected the mean salary of all Valkyrie employees for that position, or only lower-paid employees.<sup>7</sup> AR, Tab 13, Cost Evaluation at 7. In this regard, the SSD does not

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<sup>6</sup> The Navy also found Valkyrie's proposed new hire rates to be unrealistic because "the small sample of payroll records provided for each labor category does not correlate with the number of full-time equivalent personnel (FTEs) required for each labor category in the solicitation." AR, Tab 13, Cost Evaluation at 7. In essence, the Navy concluded that Valkyrie's new hire rates were unreasonably low because the number of Valkyrie employee salaries sampled in each labor category was less than the number of FTEs required on the contract. This rationale similarly rests on the unreasonable premise that current payroll data cannot support an offeror's proposed new hire rates.

<sup>7</sup> Of note, the Navy's position--that the rates are unrealistic because they do not represent the offeror's mean salary for that position--is inconsistent with its earlier view that an offeror's current salaries cannot provide support for a new hire rate.



explain why Valkyrie's support for its new hire rates must consider the salaries of all of an offeror's employees in that position.<sup>8</sup> Instead of providing additional justification for this conclusion, the Navy abandons the SSD's determination that Valkyrie's rates were unrealistic due to insufficient sample size.

In place of the original rationale, the Navy newly asserts that Valkyrie's new hire rates were unrealistic because the protester failed to provide "details containing qualifications, education or experience" for the sampled employees. MOL at 19. However, these types of supporting documentation were neither required by the cost realism methodology nor requested in the discussions letter. In this regard, the February 2019 discussions letter permits an offeror to substantiate its rates generally with payroll data, and Valkyrie provided the agency with comprehensive payroll data. See AR, Tab 19, Valkyrie Proposal, Attach. 3, Valkyrie Weekly Payroll Report. In sum, none of the agency's grounds for refusing to consider Valkyrie's current payroll data was consistent with the described cost realism methodology. On this record, the agency's basis for finding Valkyrie's rates unrealistic is unreasonable. This protest ground is sustained. Smartronix, Inc.; ManTech Adv. Sys. Int'l, Inc., supra, at 10.

Valkyrie also challenges the agency's increases to the new hire rates for two of its subcontractors, [DELETED] and [DELETED]. Protester Comments at 12, 14-15 n.12. The agency used the salary.com 25th percentile rates as the floor for the new hire rates for both of these subcontractors, on the grounds that no other data reflected the market for new hires. MOL at 23. Valkyrie provided the Navy with [DELETED]'s payroll data. AR, Tab 7, Valkyrie FPR at 9. Because we find unreasonable the agency's exclusion of a firm's actual payroll data, where the agency's cost realism evaluation methodology permits the use of such data, we sustain Valkyrie's challenge to the agency's increase to [DELETED]'s labor rates.

In contrast, given that the discussions letter allowed offerors to support their rates with "payroll data, contingency hire letters, an FPRA, invoiced and incurred rates, or [if the worker was] proposed on a Labor Hour basis," the agency had a reasonable basis to increase the rates for [DELETED], which were based solely on rates from the Payscale survey. AR, Tab 5, February 2019 Discussions Letter at 1. This challenge to the agency's evaluation is denied.

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<sup>8</sup> Valkyrie asserts that its original cost submission did contain detailed information about all of its employees, including employee, job title, hire date, hourly and annual salary, regardless of whether the employee was proposed for this effort. Protester Comments at 13 (citing AR 19, Valkyrie Proposal, Attachment 3, Valkyrie Weekly Payroll Report). The agency claims that it did not have the payroll information for the employees cited to in Valkyrie's proposal as support for Valkyrie's proposed direct hire rates. MOL at 15. However, the record reflects that payroll information for these employees was included in Valkyrie's proposal. AR, Tab 19, Valkyrie Proposal, Attachment 3, Valkyrie Weekly Payroll Report. Furthermore, in its FPR, Valkyrie provided the agency with updated payroll documentation. AR, Tab 7, Valkyrie FPR at 1, 3.

## Key Personnel

Next, Valkyrie argues that the agency's evaluation of McHenry's key personnel is flawed because McHenry appears to be advertising for key personnel positions and thus does not or cannot provide the proposed individuals. Protest at 8-9. In support of this contention, Valkyrie points to job listings placed by McHenry that Valkyrie asserts matched key personnel categories of the instant requirement. Id. at 8. The Navy claims that it "did not have any information that would indicate that [McHenry] did not intend to provide the key personnel it proposed." COS at 27.

The issue of whether personnel identified in an offeror's proposal will perform under the subsequently-awarded contract is generally a matter of contract administration that our Office does not review. See 4 C.F.R. § 21.5(a); Future-Tec Mgmt. Sys., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283793.5, B-283793.6, Mar. 20, 2000, 2000 CPD ¶ 59 at 14-15. Nonetheless, our Office will consider allegations that an offeror proposed personnel that it did not have a reasonable basis to expect to provide during contract performance in order to obtain a more favorable evaluation, as such a material misrepresentation has an adverse effect on the integrity of the competitive procurement system. See InnovaSystems Int'l, LLC, B-417215 et al., Apr. 3, 2019, 2019 CPD ¶ 159 at 7-8. Our decisions frequently refer to such circumstances as a "bait and switch." Id.

To establish an impermissible bait and switch, a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Target Media Mid-Atl., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 7. Even where there is evidence of a planned switch in key personnel, our Office will not find an impermissible bait and switch where there is no evidence of baiting, i.e., replacing proposed key personnel with less qualified personnel. Id. Similarly, the fact that the awardee posted job listings for some of the key personnel positions does not, by itself, establish that the proposed personnel were unavailable. Id.

Where, as here, there is no allegation that the awardee intends to replace individuals with less qualified ones, the allegation must fail. Dynamic Sec. Concepts, Inc., B-416013, B-416013.2, May 15, 2018, 2018 CPD ¶ 186 at 6. We therefore dismiss this allegation for failure to state a valid basis of protest. 4 C.F.R §§ 21.1(c)(4), (f); Dynamic Sec. Concepts, Inc., supra, at 5-6.

## Best-Value Tradeoff

Finally, Valkyrie challenges the reasonableness and adequacy of the agency's best-value tradeoff and resulting source selection decision. Protest at 6-7; RFP at 59. The protester contends that, given its superiority in both the technical and past performance

factors, the price difference could not reasonably outweigh its superiority in the non-cost factors.<sup>9</sup> Protester Comments at 2. The protester further argues that the agency failed to document why Valkyrie's technical advantages were not worth the price premium. Id. The agency contends that its selection of McHenry fell squarely within its discretion. MOL at 6.

In light of our decision sustaining Valkyrie's challenges to the cost realism evaluation and recommendation below that the agency conduct a new cost evaluation, which in turn could require a new source selection decision, we do not address the protester's challenges to the current source selection decision. Smartronix, Inc.; ManTech Advanced Sys. Int'l Inc., supra, at 5 n.7.<sup>10</sup>

## RECOMMENDATION

In sum, we find that the Navy's cost realism evaluation was unreasonable because it did not adequately consider Valkyrie's and [DELETED]'s proposed direct labor rates for new hires. Because a reasonable cost realism evaluation could result in a change to the evaluated most probable costs of performance and in light of the protesters' superiority to McHenry under the non-price evaluation factors, we find that the protester

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<sup>9</sup> Valkyrie also argues that the Navy's best-value tradeoff determination improperly made cost the most important award factor, when the solicitation provided that cost was the least important of the three factors. Protest at 6-7; RFP at 59. However, the solicitation contained a patent ambiguity regarding the relative weights of the evaluation factors. Compare RFP at 59 (factors of technical, past performance, and cost/price listed in descending order of importance) with id. (technical and past performance factors, when combined, are approximately equal to cost/price). Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1). Accordingly, we dismiss this aspect of the protest as untimely under our Bid Protest Regulations. Id.

<sup>10</sup> Should the agency perform a new best-value tradeoff, it may wish to address several errors in the current SSD. For example, the Navy noted that it had "been approximately 21 months since Valkyrie last performed under the previous contract." AR, Tab 14, SSD at 13. The agency discounted Valkyrie's efforts under the corporate experience technical subfactor due to the "time elapsed since performance on the previous effort[.]" Id. However, the actual time elapsed was 12 months. Navy Clarification to GAO, June 6, 2019. The Navy also reduced its assessment of Valkyrie's experience under the corporate experience factor on the basis that the level of effort for the solicited contract was 208 percent higher than on the previous contract, although the difference was in part due to differing durations (3 years versus 5 years) rather than annual level of effort. Id.; Supp. MOL at 5. In addition, as noted above, the SSD also included Valkyrie's interim proposed cost instead of final proposed cost. AR, Tab 14, SSD at 4.

has established competitive prejudice because a new best-value tradeoff could result in Valkyrie being selected for award.

We recommend that the Navy, consistent with our decision, conduct and document a new cost realism evaluation of Valkyrie's and [DELETED]'s new hire direct labor rates. We further recommend that, upon the completion of a new cost realism evaluation, the agency prepare a new source selection decision and, if the awardee is other than McHenry, terminate the award to McHenry for the convenience of the government and make a new award. We also recommend that the agency reimburse the protester the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at (f).

The protest is sustained.

Thomas H. Armstrong  
General Counsel