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## Decision

**Matter of:** Abacus Technology Corporation

**File:** B-417749.2; B-417749.3

**Date:** March 9, 2020

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Alexis J. Bernstein, Esq., and Major Alexander L. Lowry, Department of the Air Force, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency failed to reasonably evaluate whether the awardee would be able to perform the task order services at the price proposed is dismissed where the solicitation did not provide for evaluation of the realism of offerors' prices.

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### DECISION

Abacus Technology Corporation (Abacus), of Chevy Chase, Maryland, protests the issuance of a task order to Micro Technologies, LLC (MicroTech), of Vienna, Virginia, under fair opportunity proposal request (FOPR) No. FA5641-19-R-A002, which was issued by Department of the Air Force, for network and infrastructure support services. The protester argues that the agency unreasonably evaluated the awardee's technical proposal and failed to assess whether the awardee could perform the task order requirements at its proposed price.

We dismiss the protest.

### BACKGROUND

The FOPR was issued on March 25, 2019, pursuant to the fair opportunity ordering procedures of Federal Acquisition Regulation (FAR) § 16.505, for a contractor to provide network and infrastructure support services at multiple Air Force locations in

Europe. The solicitation contemplated the issuance of a fixed-price task order for a 1-year base period with three 1-year options. FOPR Cover Letter. The competition was limited to small business offerors who hold one of the agency's NETCENTS-II NetOps & Infrastructure multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts. Id. In general terms, the performance work statement (PWS) required the contractor to provide qualified professional employees in specified labor categories, for specified geographic locations, to successfully perform all stated PWS tasks. PWS at 81-92. The PWS also included estimated staffing levels, stated in terms of full-time equivalents (FTE) for each labor category, for each geographic location, and by year. Id. at 103-104.

As amended, the solicitation established that the task order would be issued to the offeror who was deemed responsible and whose technically acceptable proposal represented the best value to the government, defined as "the offer which presents the most advantageous combination of risk and total evaluated price." FOPR amend. 1 at 16. The solicitation stated that proposals would be evaluated under two evaluation factors, technical and cost/price. Id. at 16-17. The technical evaluation factor had three subfactors: technical capability, management, and technical experience. Under each technical subfactor, proposals would be evaluated on an acceptable/unacceptable basis, and proposals would then be assigned a risk rating of low, moderate, or high risk for each technical subfactor. Id. at 17-18. Under the cost/price evaluation factor, the solicitation stated that cost/price proposals "should support the proposed technical approach" and would be evaluated for completeness, reasonableness, and unbalanced pricing. Id. at 19. Offerors whose proposed price was determined to be incomplete, unreasonable, or unbalanced might not be considered for award. Id.

As relevant here, to assist the contracting officer in making the responsibility determination, the solicitation required offerors to submit a total compensation plan for all professional employees to include a completed total compensation worksheet listing the salaries and fringe benefit package for their professional employees, surveys and studies, and assessment. FOPR at 9, 33. In preparing their employee compensation plan, the solicitation instructed offerors to discuss how their proposed compensation package reflected a sound management approach, an understanding of the contract requirements, and how the proposed salary and fringe benefits would facilitate recruitment and retention of employees. Id. at 10, 33. The solicitation did not include FAR provision 52.222-46, Evaluation of Compensation for Professional Employees.

Multiple offerors submitted proposals, including Abacus and MicroTech. Following an evaluation of proposals, the agency conducted a best-value tradeoff and selected MicroTech's proposal as the best value. On June 27, 2019, Abacus received an unsuccessful offeror notice and debriefing letter in which the agency notified Abacus that the task order was issued to MicroTech. In that notice, the agency indicated that Abacus's proposal was assigned a risk rating of low under all technical evaluation subfactors, with a total evaluated price of \$64,407,498. The agency's notice also indicated that MicroTech's proposal was assigned a risk rating of moderate under one technical evaluated subfactor, with a total evaluated price of \$41,965,204. The

agency's notice advised Abacus that the fair opportunity decision authority (DA) considered each offeror's risk ratings and the significant price differential between the two offerors' total evaluated price and concluded that MicroTech's proposal was the most advantageous combination of risk and total evaluated price. The DA determined that the task order should be issued to MicroTech. Protest exh. A, Notice of Award and Debrief to Unsuccessful Offeror at 1-2 (June 27, 2019). Thereafter, Abacus submitted and received responses to its follow-up debriefing questions.

On July 8, Abacus filed its first protest with our Office, docketed as B-417749, and an amended and consolidated protest on July 12, challenging the agency's evaluation of MicroTech's proposal and the best-value tradeoff decision. Abacus alleged that MicroTech's proposal should have been rated either technically unacceptable, or assigned a higher risk level, because the awardee allegedly failed to propose a sufficient number of FTE's to meet the government's needs, as evidenced by its unreasonable low price. Amended and Consolidated Protest, July 12, 2019, at 10-12. Abacus also alleged that the agency failed to properly evaluate the awardee's total employee compensation plan, arguing that the agency was required to perform a price realism analysis to determine whether the awardee's low price reflected a lack of technical understanding of the solicitation requirements. As support, the protester argued that since the "text of the Total Employee Compensation section of the Solicitation is substantially similar to the text of FAR 52.222-46," the Air Force was required to perform a price realism evaluation of the awardee's proposed employee compensation. *Id.* at 13 (citing, SURVICE Eng'g Co., LLC, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 5).

On August 1, the agency advised that it intended to take corrective action in response to the protest. Specifically, the Air Force stated that it would take the following actions: reevaluate MicroTech's total employee compensation plan, make a new responsibility determination, reassess MicroTech's technical risk in the staffing section under the management subfactor, make a new award decision consistent with the solicitation's evaluation criteria, and other corrective action that it deemed appropriate. Notice of Corrective Action at 1 (Aug. 1, 2019). We dismissed the protest as academic based on the agency's notice. Abacus Technology Corp., B-417749, Aug. 7, 2019 (unpublished decision).

As part of the corrective action, the agency established a competitive range comprised of proposals submitted by Abacus and MicroTech, conducted what the agency terms "interchanges" with both offerors, and reevaluated proposals. The agency concluded that each offeror's employee compensation plan reflected a sound management approach and understanding of the solicitation requirements. The agency also evaluated each proposal as technically acceptable and assigned each proposal a risk rating of low. The DA determined that the proposal submitted by MicroTech represented the best value to the government and issued the task order to MicroTech. Protest exh. A, Debriefing Letter to Abacus at 1-2 (Nov. 19, 2019).

On December 2, Abacus filed the current protest on substantially the same grounds as its original protest, stating that the agency's corrective action "did not reasonably resolve any of Abacus' original concerns."<sup>1</sup> Protest at 2.

## DISCUSSION

The gravamen of Abacus's protest is that the agency unreasonably failed to evaluate whether MicroTech would be capable of performing the task order requirements at the price it proposed. In this regard, the protester points out that MicroTech's proposed price of \$41,965,204 was significantly lower than its proposed price of \$64,407,498, and contends that the agency unreasonably failed to evaluate whether the awardee's price was too low to achieve the required level of performance or whether MicroTech failed to include pricing for a portion of the requirements. Additionally, Abacus contends that the agency should have evaluated the awardee's employee compensation plan to assess whether the awardee has the ability to provide the levels of compensation proposed to recruit and retain high-level professionals to ensure successful contract performance. These arguments, in effect, concern whether the agency was required to conduct a price realism evaluation.

The agency and the intervenor requested dismissal of the protest, arguing that the solicitation did not provide for an evaluation of whether an offeror's proposed price is too low or whether it reflects an offeror's understanding of the solicitation's requirements or capability to perform the task order. Req. for Dismissal at 3-5; Intervenor's Resp. to Req. for Dismissal at 2-5. We agree that Abacus's allegations concern whether the agency was required to conduct a price realism evaluation and dismiss the protest because, as filed with our Office, it does not establish a valid basis for challenging the agency's actions. 4 C.F.R. § 21.1(f) and § 21.5(f).

Where a solicitation contemplates issuance of a fixed-price task order, or a fixed-price portion of a task order, price realism is not ordinarily considered, because a fixed-priced order places the risk and responsibility for costs and resulting profit or loss on the contractor. Maxim Healthcare Servs., Inc., B-412967.9, B-412967.11, June 25, 2018, 2018 CPD ¶ 230 at 8; HP Enter. Servs., LLC, B-413888.2 et al., June 21, 2017, 2017 CPD ¶ 239 at 5. While an agency may conduct a price realism analysis in awarding a fixed-price contract or task order for the limited purpose of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding of risk, offerors or vendors must be advised that the agency will conduct such an analysis. FAR provision 15.404-1(d)(3); Advanced C4 Solutions, Inc., B-416250.2 et al., Oct. 2, 2018, 2018 CPD ¶ 344 at 5; Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

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<sup>1</sup> The value of the task order is in excess of \$25 million. Protest exh. A, Agency Debriefing Letter at 2. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders by Department of Defense agencies under multiple award IDIQ contracts. 10 U.S.C. § 2304c(e); see 4 C.F.R. § 21.5(l).

Absent an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation: (1) states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) states that a proposal can be rejected or assessed technical risk for offering low prices. NJVC, LLC, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 9; DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9.

The protester argues that the agency was required to conduct a realism evaluation of MicroTech's employee compensation plan, we however conclude that the solicitation did not include such a requirement. In support of its position, the protester points to the solicitation language establishing that the agency would evaluate an offeror's employee compensation plan to assess whether the proposed compensation package reflected a sound management approach, an understanding of the contract requirements, and how the proposed salary and fringe benefits would facilitate recruitment and retention of employees. The protester notes that this language is substantially similar to the text of FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. Specifically, when included in a solicitation, the relevant part of this provision requires the government to evaluate an offeror's professional employee compensation plan to assess whether the plan "reflects a sound management approach and understanding of the contract requirements" and assess "the offeror's ability to provide uninterrupted high-quality work." FAR provision 52.222-46(a). The protester further notes that our Office has explained that this provision essentially contemplates a price realism evaluation.<sup>2</sup> By the inclusion of language similar to that contained in FAR provision 52.222-46, the protester concludes that the solicitation required a price realism evaluation to assess whether the awardee's compensation plan was realistic.

While we agree with the protester that the solicitation and the cited FAR provision contain similar language, the protester ignores the fact that, according to the express terms of the solicitation, an offeror's employee compensation plan was submitted only to assist the contracting officer in making a responsibility determination. See FOPR at 9. The cost/price evaluation criteria said nothing about evaluating an offeror's compensation plan, or price information for realism. Rather, the solicitation stated only

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<sup>2</sup> As our Office has stated, the purpose of a review of compensation for professional employees under FAR provision 52.222-46 is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. ELS Inc., B-283236, B-283236.2, Oct. 25, 1999, 99-2 CPD ¶ 92 at 10-11. In the context of fixed-price labor-hour contracts, such as the contemplated task order here, our Office has stated that this FAR provision anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding an offeror's proposed compensation. See Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9.

that prices would be evaluated for completeness, reasonableness, and balance. FOPR amend. 1, at 19-20. In other words, notwithstanding the similarity of the language, the solicitation notified offerors that professional employee compensation information would only be used in the context of an offeror's responsibility determination--not a price realism evaluation.

To the extent the protester's allegations can be read as a challenge to the contracting officer's affirmative determination of MicroTech's responsibility, our Office does not review affirmative determinations of responsibility except in limited circumstances. Such circumstances are protests where it is alleged that definitive responsibility criteria in the solicitation were not met, or protests that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); see, e.g., Active Deployment Sys., Inc., B-404875, May 25, 2011, 2011 CPD ¶ 113 at 3; FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308 at 7. Neither exception applies here.

Here, we find that the FOPR did not include an explicit price realism provision and we conclude that a price realism analysis was not required by the terms of the solicitation, as the protester suggests. The solicitation did not state, expressly or otherwise, that the agency would evaluate whether offerors' proposed prices were realistic, i.e., too low for the solicited task order requirements or state that the agency might reject a proposal or assess a technical risk because the offeror's proposed prices were too low. In sum, Abacus's claims that MicroTech submitted an unreasonably low price--or even that the proposed price is below the cost of performance--fails to allege a cognizable ground for protest and therefore is dismissed without further action. 4 C.F.R. §§ 21.1(c)(4) and (f); Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

We also dismiss Abacus's allegation that MicroTech's unreasonably low price suggests that the awardee failed to include pricing for a portion of the solicitation requirements, and the protester's assertion that the agency's evaluation of MicroTech's proposal under the management evaluation subfactor was unreasonable for failing to assign a higher risk rating given its low prices. The first allegation is based entirely on unsupported speculation, and the second is, in effect, nothing more than an extension of the protester's price realism challenge, which as noted above, has no basis in the terms of the solicitation. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f); see also AeroSage, LLC; Sage Care, Inc., B-415267.13, B-415267.14, Mar. 19, 2018, 2018 CPD ¶ 114 at 5. These requirements contemplate that protesters will provide, at a minimum, either allegations

or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Kodiak Base Operations Servs., LLC, B-414966 et al., Oct. 20, 2017, 2017 CPD ¶ 323 at 3. The protester's allegations do not meet these standards. 4 C.F.R. § 21.5(f).

The protest is dismissed.

Thomas H. Armstrong  
General Counsel