Decision

Matter of: FreeAlliance.com, LLC

File: B-420345.3; B-420345.4

Date: February 10, 2023

W. Brad English, Esq., Jon D. Levin, Esq., Emily J. Chancey, Esq., Nicholas P. Greer, Esq., and Mary Ann Hanke, Esq., Maynard Cooper & Gale PC, for the protester.
Edward J. Tolchin, Esq., Offit Kurman Attorneys at Law, for Resource Management Concepts, Inc., the intervenor.
Cristina L. Costa de Almeida, Esq., and Morgan E. Gierhart, Esq., Department of the Navy, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated the protester's technical proposal is denied where the record confirms that the agency assigned positive and negative findings consistent with the solicitation terms and the contents of the firm's proposal.

2. Protest that the awardee materially misrepresented its staffing plan is denied where the record confirms that the awardee proposed to use its current workforce to staff the contract, and any efforts to recruit incumbent personnel do not demonstrate that the awardee did not intend to use its current workforce, or that its current workforce is unable to perform.

3. Protest that the agency unreasonably evaluated the awardee's professional employee compensation plan is denied where the record shows that the agency reviewed the awardee's proposed labor rates and found that they were realistic based on employee payroll information and Bureau of Labor Statistics wage data.

DECISION

FreeAlliance.com, LLC, of McLean, Virginia, protests the issuance of a task order to Resource Management Concepts, Inc. (RMC), of Lexington Park, Maryland under request for proposals (RFP) No. N0042121R3006, issued by the Department of the Navy for cybersecurity services. FreeAlliance argues that the Navy unreasonably evaluated proposals and improperly made the selection decision.

We deny the protest.

BACKGROUND

On January 26, 2021, the Navy issued the RFP against the agency's SeaPort Next Generation indefinite-delivery, indefinite-quantity multiple award contract to procure cybersecurity services supporting the Naval Air Systems Command. Agency Report (AR), Tab 1, RFP at 10, 57.[1] Specific services to be provided include program management, information systems security management, and computer network defense. *Id.* at 18-23. The RFP contemplated the issuance of a cost-plus-fixed-fee task order to be performed over a 1-year base period, and four 1-year option periods. *Id.* at 3-8, 55.

Award would be made on a best-value tradeoff basis considering technical and cost factors. RFP at 66-67. When making the tradeoff determination, the technical factor would be considered significantly more important than the cost factor. *Id.* at 66. The technical factor included three elements: understanding of the requirements, key personnel resumes, and staffing plan. *Id.* at 67-68. The understanding of the requirements and staffing plan factors would not be rated, while the key personnel resumes factor would be evaluated on a pass or fail basis. *Id.* at 67.

When evaluating each offeror's proposal under the understanding of the requirements element, the RFP instructed offerors to submit responses to three sample tasks, including: (1) computer network defense (CND); (2) Navy qualified validator (NQV); and (3) risk management framework (RMF). RFP at 60.

Eighteen offerors submitted proposals prior to the March 15, 2021, close of the solicitation period. AR, Tab 3, Source Selection Authority Decision Memorandum (SSADM) at 140. The agency's evaluation produced the following relevant results:

	Overall Technical Assessment	Total Cost Proposed	Government's Cost Realism Position
FreeAlliance	Acceptable	$88,488,030	$87,989,695
RMC	Good	$77,804,045	$78,048,616

Id. at 141. After comparing proposals, the source selection authority (SSA) identified RMC's proposal as representing the best value, noting that RMC offered a superior technical approach at a lower cost. *Id.* at 151. Indeed, the SSA noted that technical evaluators identified two negative findings with FreeAlliance's technical approach that introduced risk to successful contract performance, and could potentially compromise

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[1] The agency report includes BATES page numbers, and GAO uses those citations where available.

mission critical systems. *Id.* On November 18, 2022, the agency issued the task order to RMC. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 22. After learning that its proposal was unsuccessful, FreeAlliance filed this protest with our Office.[2]

DISCUSSION

FreeAlliance raises numerous challenges to the agency's conduct of the acquisition. Principally, FreeAlliance argues that the agency unreasonably evaluated its technical understanding of the requirement, and its staffing plan. The protester also argues that RMC materially misrepresented its staffing plan. Finally, FreeAlliance argues that the Navy unreasonably evaluated RMC's professional employee compensation plan.

We have reviewed all of the challenges, and find that none provide us a basis to sustain the protest. To the extent we do not discuss a particular challenge, it is denied. At the outset we note that, in reviewing an agency's evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the evaluation and submission were reasonable, consistent with the stated evaluation criteria, and adequately documented. *Innovative Mgmt. Concepts, Inc.*, B-408070.2, Dec. 4, 2013, 2014 CPD ¶ 49 at 3. A protester's disagreement with the agency's judgments, or with the agency's determination as to the relative merits of the competing proposals, does not establish that the evaluation or source selection decision were unreasonable. *Id.*

FreeAlliance's Technical Evaluation

FreeAlliance argues that the agency unreasonably evaluated the firm's technical proposal under both the understanding of the requirements and the staffing plan elements. We discuss the challenges in succession.[3]

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[2] Because the value of the task order is over $25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award, indefinite-delivery, indefinite-quantity contracts awarded under the authority granted in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

[3] FreeAlliance argues that the agency should have assigned RMC's proposal a rating of unacceptable under the key personnel element because RMC did not propose to use incumbent personnel to fill those positions. We dismiss this allegation as insufficient.

Our Bid Protest Regulations require that protests "[s]et forth a detailed statement of the legal and factual grounds of protest" and require a protester to "clearly state legally and factually grounds of protest." 4 C.F.R. § 21.1(c)(4), (f). These requirements contemplate that a protester 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. Here, the protester has not made allegations

Understanding of the Requirements

FreeAlliance argues that the Navy unreasonably evaluated its technical understanding. The protester contends that the agency unreasonably assigned two negative findings to the firm's response to the CND task, and further argues that the Navy unreasonably failed to assign numerous positive findings. The agency counters that it reasonably assigned the two negative findings, and that it reasonably did not assign any additional positive findings.

As noted above, the RFP instructed offerors to provide responses to three sample tasks in order to demonstrate technical understanding (the CND, NQV and RMF sample tasks). The CND sample task required offerors to respond to the following scenario:

> The [Computer Network Defense] team receives an Incident Alert from an organization's Computer Systems Security Provider (CSSP) that the CSSP observed an Internet Protocol (IP) address belonging to the organization made a successful connection to a known crypto currency mining web site.

RFP at 60.

When responding, offerors were instructed to describe the tools, data of interest, required labor resources, methods, and potential recommendations that they would use or make. RFP at 60. Additionally, offerors were instructed to explain their rationale for using the identified tools, data, labor resources, methods, or for making the recommendations. *Id.*

The NQV sample task required offerors to explain how they would provide security response validation functions for various agency systems and infrastructures. RFP at 60. Additionally, offerors were required to articulate how vulnerabilities may occur, and identify the points in which Navy qualified validators should be involved in any risk management framework process. *Id.*

The RMF sample task required offerors to explain how agency information systems personnel could approach RMF processes for other internal agency offices, and integrate those offices' systems. RFP at 60. According to the sample task, offerors should also describe data sources and activities that will be useful in each step of the RMF process. *Id.*

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sufficient to demonstrate improper agency action because the RFP did not reserve a passing rating only for offerors proposing to use incumbent staff as key personnel; rather, the solicitation required only that key personnel meet the personnel qualifications outlined in the statement of work. RFP at 68. Thus, even if RMC proposed to use non-incumbent individuals as key personnel, the RFP does not prohibit the Navy from assigning a proposal a passing rating for such use.

Responses for all tasks would be evaluated for quality, depth, and relevance of information. RFP at 67. The agency would evaluate proposals to determine whether offerors demonstrated complete understanding of the services to be performed, and whether proposed approaches would successfully meet or exceed the performance requirement. *Id.* In addition, the RFP advised that a negative finding entails an aspect of a proposal that unfavorably impacts the demonstrated understanding of the requirement, adequacy of approach, or risk to performance. *Id.* at 68. Similarly, a positive finding constitutes a feature that provides a benefit to the agency, or favorably impacts the offeror's demonstrated understanding of the requirement. *Id.*

In evaluating FreeAlliance's proposal, the Navy identified some positive findings and some negative findings. AR, Tab 5, Consensus Tech. Evaluation Report (TER) at 275. Specifically, the agency identified one positive finding associated with the firm's NQV response, and another positive finding associated with the firm's RMF response. *Id.* at 272-74. Indeed, the agency noted that the firm's knowledge of the NQV requirements, and the firm's proposed enhancements to the RMF process, were beneficial features of the firm's proposal. *Id.* at 273-74.

In contrast, both negative findings were associated with the firm's CND response. AR, Tab 5, TER at 272. The first negative finding was assigned because, while FreeAlliance referenced some tools and data, the firm did not provide enough information explaining how or why it would utilize the identified tools or data. *Id.* at 273. The Navy also noted that the firm's response was too generic to demonstrate adequate understanding of the requirement because its proposal, for example, referenced analyzing computer logs, as opposed to examining specific data within the computer logs (*e.g.*, intrusion prevention system files). *Id.*

The agency assigned the second negative finding because the firm's response did not describe any specific agency personnel as stakeholders, such as the information system security manager or information system security officer, whom the firm would communicate and collaborate with during any potential investigation. AR, Tab 5, Consensus TER at 273. Instead, the agency noted that the firm's generalized statements, such as that it would communicate with all stakeholders, did not demonstrate an adequate understanding that specific agency personnel would be involved in any investigation. *Id.*

FreeAlliance contends that the agency unreasonably assigned both negative findings. Regarding the first negative finding, the protester argues the evaluation was unreasonable because its proposal described the specific tools the firm would use to address security incidents, and how it would employ those tools. For the second negative finding, FreeAlliance contends that the evaluation was unreasonable because the firm identified stakeholders, the RFP did not require identifying specific agency personnel as stakeholders, and the firm also indicated that it would communicate with specific personnel in other parts of its proposal. On this record, we have no basis to object to the Navy's assignment of the negative findings.

As to the first negative finding, our review of the record confirms that FreeAlliance did not sufficiently explain how or why it would use the identified tools and data, as required by the solicitation. *See* RFP at 60; COS/MOL at 39; Supp. MOL at 14-16. For example, the Navy demonstrates that FreeAlliance proposed to use two security incident and event management (SIEM) tools to search for affected internet protocol (IP) addresses, but critically failed to explain precisely how it would use those tools to search for and identify those IP addresses.[4] COS/MOL at 39; *see also* AR, Tab 4, FreeAlliance Proposal at 162. Similarly, our review confirms that FreeAlliance proposed to use another tool to monitor computer logs, but did not sufficiently explain how it would use this additional tool in conjunction with the SIEM tools.[5] COS/MOL at 40; *see also* AR, Tab 4, FreeAlliance Proposal at 162.

Likewise, the Navy explains, and our review confirms, that FreeAlliance proposed to use a computer network analysis tool to determine the amount of compromised data. COS/MOL at 41; *see also* AR, Tab 4, FreeAlliance Proposal at 162. Nevertheless, the Navy explains that the tool will capture "a vast amount of information," and therefore, the firm should have identified sub-types of information (*e.g.*, user agents, file names, and application types) in order to demonstrate that it understood how to successfully use the identified tool. COS/MOL at 41; *see also* AR, Tab 4, FreeAlliance Proposal at 162. Additionally, our review confirms that FreeAlliance identified multiple categories of computer logs as constituting significant data, but did not identify specific types of logs as particularly relevant or critically important, and therefore failed to demonstrate that it understood what specific type of data would be important for this scenario. COS/MOL at 48; *see also* AR, Tab 4, FreeAlliance Proposal at 163.

Further, while FreeAlliance may assert that the parts of its proposal which the agency considered vague actually provided sufficient information or adequate detail, we are not persuaded. We note such argument merely disagrees with the agency's evaluation. Accordingly, we deny the protest allegation.[6]

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[4] SIEM tools aggregate event data produced by security devices, and network infrastructure, systems, and applications. COS/MOL at 39.

[5] A log is a record of the events occurring within an organization's systems and networks. COS/ MOL at 48.

[6] In connection with this allegation, FreeAlliance also argues that the agency unequally evaluated both its and RMC's responses to the CND task because "[i]t is highly unlikely that RMC or any other bidder could have possibly addressed the tools it planned to use, why and how it planned to use them in more detail than FreeAlliance." Protest at 13. We dismiss this allegation as speculative because it does not identify any concrete facts demonstrating that RMC's response similarly lacked details, but rather relies on conjecture and speculation. *See INNOVIM, LLC*, B-419912, B-419912.2, Sept. 21, 2021, 2021 CPD ¶ 331 at 6.

As to the second negative finding, while FreeAlliance may argue that its proposal satisfied the RFP's requirement to identify broad categories of stakeholders, we are similarly unpersuaded by the protester's contentions. In this regard, we first disagree with the premise of the protester's argument that the RFP did not require offerors to describe specific agency personnel as part of their responses. *See* Protest at 15. As referenced above, the RFP provided the following instruction:

> The scenario response shall describe the . . . stakeholders . . . that you would use to address the incident. The response shall describe the communication strategies and timelines to be used during the investigation.

RFP at 60. Thus, consistent with the agency's position, we agree that the RFP required offerors to describe stakeholders (*i.e.*, agency personnel) that would be involved in the investigation because the RFP's instruction provided as much. *See* COS/MOL at 52.

Despite the RFP's requirement, FreeAlliance identified large, general categories of personnel as potential stakeholders. AR, Tab 4, FreeAlliance Proposal at 164. For example, the firm described "users" as potential stakeholders, and described "users" as encompassing all civilian, military, and contractors that use the subject network to complete their job. *Id.* As another example, FreeAlliance described the "Navy" as a potential stakeholder, and described the "Navy" as all of the agency's servicemen and women. *Id.* Additionally, FreeAlliance described the Navy's entire "Cyber Defense Operations Command" as a potential stakeholder because, according to the protester, this entire division leads investigations into these "kinds of incidents." *Id.* Thus, we do not object to the agency's evaluation because our review confirms that FreeAlliance's proposal did not describe how it would communicate or collaborate with specific agency personnel that would be critical to the investigation. *See* COS/MOL at 53-54.

To the extent FreeAlliance argues that it reasonably identified the stakeholders when it pledged to follow the Navy's incident response plan, or as part of its responses to other sample tasks, we are not persuaded. *See* Protest at 15. Our decisions explain that agencies are not required to piece together general statements and disparate parts of a protester's proposal to determine the protester's intent. *See, e.g.*, *Undercover Training, LLC*, B-418170, Jan. 9, 2020, 2020 CPD ¶ 25 at 4. Thus, we do not find the protester's argument persuasive because the agency was not required to infer FreeAlliance's intent to treat particular agency personnel, such as information systems security personnel, as stakeholders from other parts of its proposal.[7]

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[7] As part of its protest, FreeAlliance also challenges its overall technical assessment, asserting that the agency unequally evaluated both its and RMC's proposals. Protest at 16. Specifically, FreeAlliance argues that "[i]t is almost beyond imagination that RMC, which received an overall Good rating, could have written more or anything different enough that a higher rating would have been merited." *Id.* Significantly, FreeAlliance does not identify any concrete facts showing that RMC's responses to the

Next, we discuss FreeAlliance's allegation that the agency failed to assign additional positive findings due to the firm's robust prior corporate experience. For example, FreeAlliance argues that the agency overlooked the firm's experience from another contract where the firm resolved a task similar to the CND sample task. Protest at 17. As another example, FreeAlliance argues that its firm has experience performing research and compilation of validation requirements, which is comparable to the NQV sample task. *Id.* The agency counters that it reasonably did not assign positive findings based on the firm's prior corporate experience. COS/MOL at 61-62.

The record shows that the Navy reviewed both of these aspects of the firm's proposal, and concluded that neither warranted the assignment of an additional positive finding. AR, Tab 6, Decl. of Technical Evaluation Team (TET) Lead at 281. The Navy explains, and we agree, that the RFP did not contemplate evaluating corporate experience as part of this evaluation factor. *See id.*; *see also* RFP at 68. With respect to the protester's experience resolving issues similar to the CND task, the Navy explains that this did not warrant an additional positive finding because the firm's proposal did not articulate how its experience would enhance communication strategies and timelines to be used in any CND incident. *Id.* The Navy also explains that FreeAlliance's experience producing the [DELETED] did not warrant an additional positive finding because the agency and multiple contractors produced [DELETED], and the firm never articulated how this experience would provide any additional benefit.[8] *Id.* at 283.

Thus, we deny the protest allegation because the record shows that the agency considered these features in accordance with the terms of the solicitation, and determined that they did not provide any additional benefit. To the extent the protester complains that these features demonstrated greater technical understanding of the agency's requirement, see Comments and Supp. Protest at 10-12, we note the

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sample tasks included the same or identical technical solutions, including the failure to identify relevant stakeholders. *See id.* Thus, we dismiss this allegation because it lacks any factual supporting evidence, and instead, relies entirely on conjecture and speculation. *See INNOVIM, LLC*, *supra*.

[8] In its comments, FreeAlliance argues that the agency is "moving the goal posts in the middle of the game," when the Navy explains that positive findings were assigned when an offeror's proposal included a feature that constituted an added benefit. Comments and Supp. Protest at 10. The RFP provided that a positive finding constitutes:

> Findings in the evaluation that: provide merit and/or benefit to the Government; and/or favorably impact the demonstrated understanding of the requirements, adequacy of approach, or associated risk to performance.

RFP at 68. We disagree with the protester's argument. As stated above, the RFP specifically provided that a positive finding constituted a feature that provided merit or benefit to the government. *Id.*

argument disagrees with the agency's judgment and, without more, does not provide us with a basis to find the evaluation unreasonable. *See Innovative Mgmt. Concepts, Inc.*, *supra*.

Staffing Plan

FreeAlliance argues that the Navy unreasonably failed to assign positive findings to the firm's staffing plan. Comments and Supp. Protest at 16. According to FreeAlliance, it should have been assigned a positive finding for demonstrating that it could provide most of the incumbent staff. *Id.*; *see also* Protest at 19. Likewise, FreeAlliance argues that it should have been assigned a positive finding for having a shortlist of [DELETED] for the remaining staff positions. Protest at 19. The agency responds that it considered these aspects, and concluded that they did not warrant any positive findings. COS/MOL at 65-67.

As background, the RFP instructed offerors to provide their staffing plans. RFP at 61. Staffing plans were required to identify recruitment and retention methods, how personnel clearances would be obtained by the start of contract performance, risk mitigation strategies, and subcontractor management approach. *Id.* Staffing plans would be evaluated to assess each offeror's understanding and ability to provide and retain qualified personnel. *Id.* The agency would assess the adequacy of each offeror's subcontractor management approach. *Id.*

On this record, we do not find any basis to object to the agency's evaluation. As an initial matter, we note that the solicitation did not stipulate that offerors proposing to use incumbent staff or having robust recruiting pipelines would be evaluated favorably. *See* RFP at 68. Further, the record shows that the agency reviewed each aspect of the firm's staffing plan, and simply concluded that the overall staffing plan was adequate, but that no single feature provided an added benefit. AR, Tab 5, TER at 277-78.

In this regard, the record shows that the Navy specifically noted that the firm's proposal contained numerous references to its ability to retain and utilize [DELETED] members of the incumbent staff. AR, Tab 5, TER at 278. Nevertheless, the record also shows that the Navy did not consider this aspect to be beneficial because the firm was not obligated to utilize any of the incumbent staff (other than proposed key personnel). *Id.*; AR, Tab 6, Decl. of TET Lead at 288. Further, the Navy noted that the signed commitment letters did not provide any additional benefit because, according to the agency, incumbent staff often sign commitment letters with multiple offerors. *Id.* Additionally, the Navy noted that commitment letters do not prevent incumbent staff from seeking new employment at any time. *Id.* Thus, we do not object to the evaluation because our review confirms that the Navy considered this aspect of the firm's proposal, and concluded that it did not offer any added benefit. *See* COS/MOL at 66-67.

Likewise, the record shows that the agency considered that FreeAlliance's proposal explained that the firm had a [DELETED] shortlist of qualified candidates. AR, Tab 6, Decl. of TET Lead at 288. Even so, the agency evaluators did not consider the high

number of qualified candidates to be beneficial because the number could not be substantiated or verified based on the contents of the firm's proposal. *Id.* As a result, the agency evaluators simply considered FreeAlliance as demonstrating that the firm had an available recruiting pipeline in order to meet contract staffing requirements, which, according to the agency, did not provide any additional benefit. *Id.* Thus, we do not object to the agency's evaluation because our review confirms that the agency fully considered this feature, and reasonably determined that it did not warrant the assignment of a positive finding. *See* COS/MOL at 66.

While FreeAlliance may argue that both its plan to use [DELETED] members of the incumbent staff and its shortlist of qualified candidates constituted additional benefits because they demonstrate that the firm has a lower risk of unsuccessfully staffing the contract, we note such arguments do not provide us with a basis to sustain the protest. *See* Comments and Supp. Protest at 16. Indeed, such arguments merely disagree with the agency's evaluation judgments because they dispute the relative worth or benefit of FreeAlliance's plan to use incumbent staff and its recruiting pipeline rather than demonstrate that the evaluation was inconsistent with the solicitation or contents of the firm's proposal.

RMC's Staffing Plan

FreeAlliance argues that RMC materially misrepresented its staffing plan. According to FreeAlliance, RMC proposed to staff this contract with non-incumbent personnel, but, subsequently, attempted to recruit the majority of the incumbent staff.[9] Thus, FreeAlliance argues that RMC materially misrepresented its proposed staff because the firm indicated that it would utilize non-incumbent staff but ultimately intended to use the incumbent staff. The agency counters that the record does not contain any evidence showing that RMC misrepresented its staffing plan. Supp. MOL at 26-33.

The issue of whether personnel identified in an offeror's proposal, in fact, perform under the subsequently issued task order is generally a matter of contract administration that our Office does not review. 4 C.F.R. § 21.5(a). 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. *Patricio Enters., Inc.*, B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 4. Our decisions frequently refer to such circumstances as a "bait and switch." *Id.*

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[9] As a point of reference, the agency initially issued the task order to RMC on November 8, 2021. Protest at 6. FreeAlliance challenged that agency action in a protest filed with our Office on November 8. *Id.* In response, the agency elected to reevaluate proposals, and our Office dismissed the protest as academic based on the agency's decision to take corrective action. *Id.* According to FreeAlliance, RMC attempted to recruit the incumbent workforce while the agency was reevaluating proposals. *Id.*

In order to establish an impermissible "bait and switch," a protester must show: (1) that the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during contract performance, (2) that the misrepresentation was relied on by the agency, and (3) that the agency's reliance on the misrepresentation had a material effect on the evaluation results. *GCC Techs., LLC*, B-416459.2, Nov. 19, 2018, 2018 CPD ¶ 394 at 7.

Here, we do not find any basis to conclude that RMC engaged in a material misrepresentation because the record does not show that the firm either knowingly or negligently misrepresented the availability of any staff. While RMC's staffing plan shows that the firm proposed to use current employees to fill the majority of the staff positions, the record significantly does not show that these employees are unavailable, or that RMC never intended to furnish these employees. *See* AR, Tab 14, RMC Proposal at 425; *see also* Supp. MOL at 29.

Although FreeAlliance points out that RMC attempted to recruit the majority of the incumbent staff, we agree with the agency that this fact alone does not constitute evidence that RMC's employees were otherwise unavailable, or that RMC misrepresented its staffing plan. *See* Comments and Supp. Protest at 18; Supp. MOL at 29; *see also DarkStar Intelligence, LLC*, B-420609, B-420609.2, June 24, 2022, 2022 CPD ¶ 153 at 6 (evidence of recruitment efforts targeting incumbent employees do not establish that the awardee knowingly or negligently misrepresented its staffing plan). Further, our decisions explain that there is simply nothing unusual nor inherently improper for an awardee to recruit and hire personnel previously employed by an incumbent contractor. *Allied Tech. Group, Inc.*, B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13-14; *accord Lifecare Mgmt. Partners*, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 6 n.11. Accordingly, we deny the protest allegation.[10]

Evaluation of RMC's Professional Employees Compensation Plan

FreeAlliance argues that the agency unreasonably evaluated RMC's total compensation plan (*i.e.*, professional employees compensation plan). To support its allegation,

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[10] To the extent FreeAlliance argues that RMC's recruitment of incumbent personnel constituted significant countervailing evidence casting doubt on the accuracy of RMC's staffing plan, we are not persuaded. *See* Comments and Supp. Protest at 20-21; *see also Fidelis Logistic and Supply Servs.*, B-414445, B-414445.2, May 17, 2017, 2017 CPD ¶ 150 at 7 ("Our Office has explained that, in certain circumstances, an agency may not accept at face value a proposal's promise to meet a material requirement where there is significant countervailing evidence reasonably known to the agency that should create doubt as to whether the offeror will or can comply with that requirement."). As noted above, an offeror's recruitment of incumbent personnel is routine and not unusual, and therefore, we agree with the Navy that RMC's alleged broad recruitment of incumbent personnel does not constitute significant countervailing evidence. *See* Supp. MOL at 31. Accordingly, we deny the protest allegation.

B-420345.3; B-420345.4

FreeAlliance asserts that RMC's proposed direct labor rates were too low in order to retain and recruit incumbent personnel. The agency responds that it reasonably evaluated RMC's total compensation plan.

As relevant here, the RFP instructed offerors to provide a total compensation plan, which should include direct labor rates for each proposed employee, the total cost of the fringe benefits package for each employee, a description of the fringe benefits package, and any other information used to establish the total compensation structure. RFP at 62-63. The RFP advised that the agency would evaluate total compensation plans in accordance with Federal Acquisition Regulation (FAR) provision 52.222-46.

RMC submitted its total compensation plan, and provided the direct labor rates and fringe benefits information. *See* AR, Tab 13, RMC Cost Summary Proposal, Detailed Cost Spreadsheet; AR, Tab 14, RMC Proposal at 473-82. Significantly, RMC verified that direct labor rates for its proposed employees were consistent with current payroll information. AR, Tab 14, RMC Proposal at 480, 487-493. RMC also provided payroll verification information for its subcontractors' proposed employees. *Id.* Ultimately, the Navy evaluated RMC's compensation plan as sufficient to recruit and retain qualified professional employees, and demonstrating a sound technical understanding of the requirement. AR, Tab 9, RMC Cost Report at 342-43.

The purpose of 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 work to be performed. *Obsidian Sols. Grp., LLC*, B-416343, B-416343.3, Aug. 8, 2018, 2018 CPD ¶ 274 at 7. The provision requires that the agency evaluate an offeror's total compensation plan (*i.e.*, salaries and fringe benefits) by considering its impact on recruiting and retention, its realism, and its consistency with a total plan for compensation. FAR provision 52.222-46(a).

Further, and as relevant here, where an agency is soliciting services for a recompetition of an existing requirement, FAR provision 52.222-46(b) requires the agency to determine whether an offeror proposes compensation levels lower than predecessor contracts by, for example, comparing proposed compensation rates to those of the incumbent contractor. FAR provision 52.222-46(b); *accord Guidehouse LLP; Jacobs Tech., Inc.*, B-420860 *et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 7. Where the agency determines that the proposed compensation level is lower, the agency must further assess the proposed levels to determine whether they will maintain program continuity, provide uninterrupted high-quality work, and ensure the availability of competent professional employees. FAR provision 52.222-46(b). In short, the agency must determine whether the lower proposed compensation levels are realistic. *See Guidehouse LLP; Jacobs Tech., Inc.*, *supra*.

On this record, we find no basis to object to the Navy's evaluation of RMC's total proposed compensation. The record shows that the agency compared RMC's direct labor rates to the incumbent's rates, and determined that most of RMC's proposed rates

were lower. AR, Tab 9, RMC Cost Proposal at 339-340. Despite the majority of the rates being lower, the Navy determined that the rates were realistic because RMC provided payroll verification (*i.e.*, showed that its employees who would staff the positions were currently being paid the proposed rates) for current employees. *Id.* at 341. Additionally, the Navy determined that proposed rates for prospective employees were realistic because they were consistent with Bureau of Labor Statistics wage data for the pertinent labor categories.[11] *Id.*

Further, the record shows that the agency compared RMC's proposed fringe benefits package and the incumbent's fringe benefits package, and determined that RMC's benefits were similar. AR, Tab 9, RMC Cost Report at 341. Based on its comparison, the agency also determined that RMC's proposed benefits reduced any risk of unsuccessful performance owing to the firm's plan to use average labor rates. *Id.* Thus, we find that the agency reasonably evaluated RMC's proposed compensation plan as sufficient because, even though the Navy determined that RMC's proposed compensation was lower than the incumbent's, the agency used payroll certification and available wage data to conclude that the proposed rates were realistic.

To the extent FreeAlliance argues that the agency could not rely on the payroll certification information because RMC did not intend to use its employees, we are not persuaded. *See* Supp. Comments at 7. As noted earlier, RMC's staffing plan contemplated using mostly current employees, and we do not find RMC's recruitment of incumbent personnel as unusual or indicative that the firm misrepresented its staffing plan.[12] *See* AR, Tab 14, RMC Proposal at 425.

Selection Decision

Finally, FreeAlliance contends that the agency unreasonably made the selection decision. Protest at 24. Specifically, FreeAlliance argues that the agency relied on inaccurate technical and cost evaluations to support the award to RMC. *Id.* To this

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[11] As an aside, the Navy determined that one particular proposed rate was unrealistically low, but noted that the effect of that single low proposed rate on RMC's ability to perform was trivial. AR, Tab 9, RMC Cost Proposal at 341.

[12] As a related allegation, FreeAlliance argues that the agency unreasonably conducted the cost realism assessment. According to FreeAlliance, the Navy improperly failed to consider that RMC's direct labor rates were unrealistically low because the firm intended to use incumbent personnel, as opposed to RMC staff. As with the firm's challenge to the Navy's professional compensation analysis, we do not object to the agency's assessment because RMC's staffing plan relied on using mostly current employees, and the agency verified the labor rates. *See* AR, Tab 14, RMC Proposal at 425; *see also* AR, Tab 9, RMC Cost Report at 323-329 (evaluating the firm's proposed labor rates and concluding that the labor rates were realistic as the firm provided verifying information for current employees).

end, FreeAlliance asserts that, had the agency conducted proper evaluations, then its proposal would have been recognized as offering the best value. *Id.*

We dismiss this allegation because the allegation is derivative of FreeAlliance's challenges to the agency's technical and cost evaluations and do not provide independent bases of protest. *See, e.g.*, *Safeguard Base Operations, LLC*, B-415588.6, B-415588.7, Dec. 14, 2018, 2018 CPD ¶ 426 at 4. Moreover, our Office has already determined that the agency reasonably conducted its technical and cost evaluations, and therefore, we agree with the agency that the SSA could reasonably base the tradeoff analysis on the evaluations. *See* AR, Tab 3, SSADM at 151.

The protest is denied.

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General Counsel