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Decision

Matter of: Veterans Management Services, Inc.

File: B-421070.4

Date: May 8, 2023

Gunjan R. Talati, Esq., Jennifer L. Andrews, Esq., and Kurtis Anderson, Esq., Kilpatrick Townsend & Stockton LLP, for the protester.

Adam Humphries, Esq., Department of Agriculture, for the agency.

Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's total compensation evaluation of the protester's quotation pursuant to Federal Acquisition Regulation provision 52.222-46 is sustained where the agency failed to evaluate quotations consistent with that provision.

DECISION

Veterans Management Services, Inc., a small business of Sterling, Virginia, protests the award of a contract to Stafford Consulting Company, Inc., a small business of McLean, Virginia, under request for quotations (RFQ) No. 1282B122Q0011, issued by the U.S. Department of Agriculture (USDA), U.S. Forest Service, for acquisition support services. The protester primarily contends that the agency's evaluation of quotations was unreasonable and that the agency's best-value determination was flawed.

We sustain the protest.

BACKGROUND

On July 29, 2022, USDA issued the RFQ, set aside for service-disabled veteran-owned small businesses, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, seeking quotations for professional acquisition support services for the USDA Forest Service's Special Project Operations Center. Agency Report (AR),

Exh. 13, RFQ at 1, 13.¹ The RFQ contemplated the issuance of one fixed-price task order to a holder of the General Services Administration (GSA)'s multiple award schedule (MAS) contract with special item number 541611 (Professional Services-- Business Administrative Services) for one base year and up to four 1-year options. *Id.* at 13.

The RFQ advised that an order would be issued to the "responsible [o]fferor whose quote represent[ed] the best value to the [g]overnment, considering price and other factors."² *Id.* at 15. The three technical factors, listed in descending order of importance, were: (1) technical approach/capability and prior relevant experience (go/no-go criterion); (2) management plan including capability of proposed key personnel; and (3) past performance. *Id.* at 16. The technical factors, when combined, were equal in importance to price. *Id.*

With respect to pricing, the RFQ instructed vendors to complete a provided pricing form, which included different contract line item numbers (CLINs) for each labor category required by the performance work statement (PWS) and for each year of contract performance.³ *Id.* at 18, 78. For each CLIN, vendors were to submit the hourly labor rates as established by their underlying MAS contract, their proposed discount from these rates expressed in a percentage, an extended price, and a total price.⁴ *Id.* The RFQ also required vendors to include a copy of their underlying MAS contracts, and advised vendors that USDA would "verify the information from [vendors' MAS price catalogs] against the pricing form[s]" submitted. *Id.* at 18.

The RFQ also included FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* at 22. This provision provides, in relevant part, that it is "in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated," therefore vendors are required to "submit a total compensation plan setting forth salaries and fringe benefits proposed for the

¹ The solicitation was amended four times. Citations to the RFQ are to the conformed copy through amendment four.

² As vendors typically respond to requests for quotations, references to "offeror" in the decision will be replaced with "vendor," unless the decision is quoting the record. Similarly, references to "proposals" or "quotes" will be replaced with "quotations."

³ The PWS identified the required labor categories as contractor project management, senior contract specialist, mid-level contract specialist, and junior contract specialist. RFQ at 44-45.

⁴ The extended price for each CLIN represented a vendor's discounted hourly labor rate, calculated by taking the vendor's MAS labor rate and applying the proposed discount percentage. The total price for each CLIN was then calculated by multiplying the extended price by both a set number of hours (*i.e.*, 1920 hours for one year) and the number of employees proposed for that labor category. RFQ at 78.

professional employees who will work under the contract.” FAR provision 52.222-46(a). The provision further provides that the government would “evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements,” and as part of its evaluation, the agency would consider the professional compensation proposed in terms of “its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation.” *Id.* Aside from this FAR provision and the statement that the agency would verify the vendors’ MAS pricing against the pricing forms, the RFQ did not contain an independent price evaluation criterion authorizing a price realism analysis, or otherwise explain how the agency would evaluate price.

In amendment 0004 to the RFQ, USDA incorporated questions and answers (Q&A) it had received and provided to prospective vendors. AR, Exh. 14, RFQ Amendment 4. In the Q&A, the agency confirmed that vendors were required to submit their total compensation plans in accordance with FAR provision 52.222-46. AR, Exh. 12, Amendment 0004 Q&A at 5.

USDA received eight quotations by the solicitation’s August 22 deadline for receipt of quotations, including quotations from Veterans Management and Stafford. Contracting Officer’s Statement (COS) at 1. After evaluating the quotations, the agency issued the task order to Stafford, concluding that the firm’s quotation represented the best value to the government. On September 19, Veterans Management filed a bid protest with our Office, primarily challenging the agency’s evaluation of quotations and best-value determination. See Protest at 2.

The GAO attorney assigned to the protest conducted an outcome prediction alternative dispute resolution (ADR) conference with the parties during which the GAO attorney advised the parties that the protest would likely be sustained. In this regard, the GAO attorney advised that the agency unreasonably evaluated quotations pursuant to FAR provision 52.222-46, because the agency had failed to consider fringe benefits as part of vendors’ proposed total compensation plan evaluations. Subsequently, the agency elected to take voluntary corrective action in the form of a reevaluation of the previously submitted quotations, including an evaluation of vendors’ fringe benefits, and issuance of a new award decision. *Veterans Management Services, Inc.*, B-421070.1, B-421070.2, Dec. 21, 2022 (unpublished decision) at 1. Our Office dismissed Veterans Management’s protest as academic on December 21. *Id.*

As relevant, USDA’s reevaluation of quotations yielded the following results:

	Veterans Mgmt	Stafford
Total Evaluated Price⁵	\$41,781,264	\$47,470,938
Technical Approach	Go	Go
Management Plan	Acceptable	Acceptable
Past Performance	Acceptable	Acceptable
Realism	Unrealistic	Realistic

AR, Exh. 25, Best-Value Decision Memorandum at 5. The agency found Veterans Management’s “total compensation plan . . . [was] unrealistic, not in reasonable relationship to job complexity, and may impair the [vendor’s] ability to attract and retain competent professional service employees.” *Id.* The agency again determined that Stafford’s quotation represented the best value to the agency and selected Stafford for the task order. *Id.* at 22. In this regard, the agency concluded that while Stafford, Veterans Management, and a third vendor had earned the highest technical ratings, Stafford’s pricing was “fair, reasonable, balanced, and realistic.” *Id.* After receiving a brief explanation of award, the protester filed the instant protest with our Office on January 27.

DISCUSSION

Veterans Management challenges USDA’s evaluation of quotations and best-value determination as unreasonable in multiple respects. See Protest at 16-28. In particular, the protester alleges that the agency conducted an unreasonable evaluation pursuant to FAR provision 52.222-46 and an improper overall price realism evaluation. The protester also contends that the agency’s price evaluation relied on prejudicial mathematical errors. The agency maintains that its evaluation of quotations was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. See Memorandum of Law (MOL) at 2-9.

When an agency issues a solicitation under FAR subpart 8.4 and conducts a competition, our Office will not reevaluate quotations or substitute our judgment for that of the agency; rather, we will review the record to ensure that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Kearney & Company, PC*, B-420331, B-420331.2, Feb. 4, 2022, 2022 CPD ¶ 56 at 5; *Guidehouse, LLP*, B-419336 *et al.*, Jan. 21, 2021, 2021 CPD ¶ 60 at 6. A protester’s disagreement with the agency’s judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Guidehouse, LLP, supra* at 6.

⁵ The total evaluated price (TEP) for each vendor consisted of a sum of CLIN prices across all years of the contract (base year plus four 1-year options). Pricing for each year was calculated by taking the sum of all CLINs for that year.

Further, while we consider the entire record in resolving a protest, including statements and arguments in response to a protest, in determining whether an agency's selection decision is supportable, under certain circumstances, our Office will accord lesser weight to *post-hoc* arguments or analyses. This is because judgments made "in the heat of an adversarial process" may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. *Vertex Aerospace, LLC*, B-420073, B-420073.2, Nov. 23, 2021, 2022 CPD ¶ 5 at 10.

For the reasons explained below, we sustain the protest. While our decision does not address every argument raised by the protester, our Office has considered them all and find that none establishes an additional basis on which to sustain the protest.

FAR Provision 52.222-46, Evaluation of Compensation for Professional Employees

Veterans Management contends that the agency's evaluation under FAR provision 52.222-46 was improper in two respects. First, the protester argues that the agency improperly used vendors' total evaluated prices and fully burdened labor rates as the basis of its evaluation. The protester contends that the agency was instead required to evaluate vendors' salary compensation for their employees as contemplated by the provision. Second, the protester argues that the agency's 52.222-46 evaluation improperly considered labor categories that do not qualify as professional employees under the provision. For the reasons discussed below, we sustain the protest in both respects.

Evaluation of Total Compensation

Veterans Management argues that USDA's total compensation plan evaluation pursuant to FAR provision 52.222-46 was flawed because it considered the protester's total evaluated price and burdened labor rates. Protest at 18; Comments at 5. The protester asserts that the evaluation should have considered only Veterans Management's proposed compensation, *i.e.*, the salary paid and fringe benefits offered to the employees. Protest at 18-19; Comments at 5.

As explained above, the RFQ required vendors to complete a pricing form which contained for each labor category CLIN, the established MAS contract burdened rates, proposed discount, extended price, and total price. USDA also informed vendors that "[c]ompensation plans are required [in accordance with FAR provision] 52.222-46." The solicitation advised only that USDA would "verify the information" provided in the pricing form. Aside from this, the only other language in the solicitation that addressed how price would be evaluated was FAR provision 52.222-46.

Veterans Management submitted the pricing form with its quotation as well as a compensation plan that included yearly salary bands showing the salary ranges for each labor category required by the PWS. Protest, ex. F, Veterans Management Price Volume at 9. To evaluate price, the record shows that the agency first calculated an

average TEP for the competition by taking the sum of all vendors' TEPs and dividing that sum by the number of vendors. COS at 7; AR, Exh. 25, Best-Value Decision Memorandum at 11. The agency then compared each vendor's TEP to this TEP competitive average. AR, Exh. 24, Price Evaluation. Using a similar approach, the agency also calculated for each labor category a competitive average fully burdened labor rate as well as an average hourly labor rate for each vendor.⁶ The agency then compared each vendor's average labor rates to the competitive average labor rates, by labor category. COS at 3; AR, Exh. 25, Best-Value Decision Memorandum at 11.

In the best-value decision memorandum, under a heading titled "52.222-46 Evaluation of Compensation for Professional Employees," USDA explained how it evaluated Veterans Management's quotation under this provision. The agency first noted that "[d]ue to GSA rates being fully burdened, it is unclear how much of [Veterans Management's] hourly rate is actually paid to the employee in salary and how much contributes to company [o]verhead and [p]rofit." AR, Exh. 25, Best-Value Decision Memorandum at 13. The agency further explained that it "utilized comparative analysis of other fully burdened rates to assess how [Veterans Management] rates perform against industry competition as it relates to recruitment and retention of equal knowledge, skills, and abilities." *Id.*

The agency found that Veterans Management's TEP was [DELETED] percent below the TEP competitive average and that Veterans Management's average fully burdened labor rates ranged from [DELETED] to [DELETED] percent lower than the competitive average per labor category, and were, on average, [DELETED] percent lower than the competitive average. *Id.* at 12. The agency concluded that "this offer presents risk in its ability to appeal to highly qualified job seekers while remaining reasonable when compared to other employees." *Id.* at 13. With respect to Veterans Management's salary numbers, the agency found only that the salary "falls within the [DELETED] percentile (minimum) and in some cases [DELETED] percentile for this industry." *Id.* In making this finding, the agency did not use an industry benchmark or standard or otherwise provide its own analysis, but instead indicated it relied solely on representations from the protester's quotation. *See id.*

Veterans Management contends that the agency's analysis was inconsistent with the terms of FAR provision 52.222-46, which "concerns itself with compensation (salary and fringe) paid to professional employees and does not concern itself with an offeror's total extended price or fully burden[ed] labor rates."⁷ Comments at 5. The protester asserts

⁶ The agency calculated the vendor's average hourly labor rate for each labor category by adding the base year and all option period rates and dividing by five, the total number of years for the contract. AR, Exh. 25, Best-Value Decision Memorandum at 11.

⁷ FAR provision 52.222-46 states, in relevant part:

(continued...)

that the agency “converted the limited analysis at FAR 52.222-46 for professional compensation into an overall price realism analysis.” *Id.* at 6. The protester further argues that the agency failed to evaluate the salary information included in the protester’s quotation, as it was required to do under FAR provision 52.222-46. *Id.* at 7.

USDA responds that because FAR provision 52.222-46 was incorporated into the solicitation, a price realism analysis of compensation plans was allowed and performed. See MOL at 3-4. Other than this argument, the agency did not explain why it thought its approach was proper and did not address the distinction between total compensation and burdened labor rates drawn by the protester. See *id.*

Our Office has found that in the context of fixed-price contracts, FAR provision 52.222-46 anticipates an evaluation of whether a vendor understands the contract requirements, and has provided a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding a vendor’s proposed compensation. See *MicroTechnologies, LLC*, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 8. Because this provision focuses on the realism of the vendor’s proposed compensation, where the agency is in possession of that information, e.g., proposed salary, then it must consider that data when conducting a 52.222-46 evaluation. See *Inquiries, Inc.*, B-417415.2, Dec. 30, 2019, 2020 CPD ¶ 54 at 20.

Our Office has also addressed when it is appropriate for an agency to consider burdened labor rates in a total compensation evaluation under this provision. See *id.* Specifically, where an agency requests from prospective vendors only burdened labor rates and where the agency does not have other compensation data, we have found reasonable an agency’s use of burdened labor rates in evaluating total compensation. See *id.*; *ENMAX Corporation*, B-281965, May 12, 1999, 99-1 CPD ¶ 102 (explaining

(...continued)

(a) . . . It is therefore in the Government’s best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror’s ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. FAR provision 52.222-46(a).

agency's evaluation was reasonable because the protester should have been on notice of the agency's intended evaluation methodology based on the information requested). However, where an agency requests and obtains both burdened labor rates and salary and fringe information, an agency may use burdened labor rates as part of its FAR provision 52.222-46 evaluation, but the agency must also meaningfully consider vendors' proposed salary and fringe benefit information as part of its total compensation evaluation under the provision.⁸ See *Inquiries, Inc.*, *supra* at 21. In short, if the agency has salary information from the vendors, it cannot ignore that data when conducting a 52.222-46 evaluation.

We find USDA's evaluation under FAR provision 52.222-46 to be improper. The solicitation required vendors to submit burdened labor rates in the pricing form along with a separate compensation plan. The protester submitted salary information that included salary bands showing salary ranges. Protest, exh. F, Veterans Management Price Volume at 9. The record also demonstrates the protester submitted fringe benefit information. *Id.* at 9-10. With this additional salary and fringe information, we find that the agency could not rely solely on burdened labor rate information in its FAR provision 52.222-46 evaluation; it also had to, at a minimum, meaningfully consider salary and fringe benefit information. The record shows that the agency's price analysis focused primarily on the comparison of Veterans Management's TEP and burdened labor rates against the competitive average TEP and labor rates. The results of this comparison led the agency to conclude that the protester's TEP and labor rates presented risk and were unrealistic.

While the agency's best-value decision memorandum referred to the industry percentiles in which the protester's proposed salaries fell, the record does not otherwise show that the agency meaningfully considered the pay bands and specific salary ranges that Veterans Management provided in its quotation. See AR, Exh. 25, Best-Value Decision Memorandum at 13. The absence of any discussion or further evaluation by the agency regarding the protester's proposed salary bands, or even an explanation as to why it did not consider the protester's proposed salary bands, indicates that the agency did not meaningfully consider this information. We find this to be unreasonable. See *The Bionetics Corp.*, B-419727, July 13, 2021, 2021 CPD ¶ 259 at 8 (finding agency's actions were improper where solicitation included FAR provision 52.222-46 and the agency ignored unburdened labor rate and fringe benefit information provided in proposals). We therefore sustain the protest on this basis.

⁸ In this regard, burdened labor rates include cost elements such as profit and indirect costs that are not paid to employees as part of their salary or benefits; thus the evaluation of these costs elements alone could lead to a misleading conclusion about the realism of the proposed professional compensation. *Inquiries, Inc.*, *supra* at 20.

Evaluation of Professional Employees

Veterans Management also challenges the scope of USDA's total compensation evaluation pursuant to FAR provision 52.222-46. Here, the protester argues the agency improperly considered all labor categories required by the PWS as part of the agency's review of total compensation to be paid to professional employees, and not simply those labor categories meeting the definition of "professional employee." See Protest at 23-24. In this regard, FAR provision 52.222-46 requires offerors to provide compensation for professional employees, "as defined in 29 C.F.R. 541." FAR provision 52.222-46(a). The provision requires agencies to evaluate the total compensation paid to professional employees to ensure professional employees are properly and fairly compensated as well as whether compensation to be paid is realistic. *Id.* Citing the definition of "professional employee" at 29 C.F.R. § 541.300(a)(2)(i), the protester argues that only one labor category required by the PWS met this definition and therefore that was the only labor category the agency should have considered in its FAR provision 52.222-46 evaluation.

As relevant to the protest, 29 C.F.R. part 541 states that "the term 'employee employed in a *bona fide* professional capacity' . . . shall mean any employee . . . [w]hose primary duty is [in] the performance of work [r]equiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction[.]"⁹ 29 C.F.R. § 541.300(a). Veterans Management argues that only the contractor project management labor category required a degree of any sort, and thus the other labor categories did not meet the definition of professional employee.¹⁰ See *id.* at 23. Thus, the protester argues that the agency, in evaluating the rates for all labor categories, failed to evaluate the total compensation of "professional employees." *Id.* at 24.

USDA does not argue that all of the labor categories are professional employees within the meaning of the term as used in FAR provision 52.222-46. See MOL at 6-7.

⁹ Part 541 of title 29 of the Code of Federal Regulations addresses exemptions to the Fair Labor Standards Act's minimum wage and overtime requirements and provides definitions for various employee categories identified in the Fair Labor Standards Act, including "professional employees." See 29 C.F.R. Part 541. The parties do not dispute that FAR provision 52.222-46 utilizes the definition of "professional employee" found in this part.

¹⁰ The PWS also required certain senior contract specialists to be designated as "team leads," and identified a degree requirement for those positions. RFQ at 44. However, the RFQ did not require separate CLIN prices for the team leads, and those positions were included with the senior contract specialist CLIN. See *id.* at 78. The protester contends that at most, only the contractor project manager and senior contract specialists designated as team leads could be considered "professional employees." See Protest at 23.

Instead, the agency argues that Veterans Management benefitted from the way in which the agency evaluated quotations and therefore was not competitively prejudiced by the analysis. *Id.* To this end, the agency argues that the protester's evaluated pricing would have deviated from the awardee's pricing by an even greater amount if the agency had evaluated only the contractor project management and senior contract specialist positions. *Id.* According to the agency, this greater deviation would "further decrease the agency's confidence in [Veterans Management's] ability to appeal to and retain highly qualified job seekers while remaining reasonable when compared to other employers." *Id.* at 7.

Based on our review of the record, we find that the labor categories of junior contract specialist, mid-level contract specialist, and certain senior contract specialists, as described by the PWS, are not "professional employees" for the purposes of the total compensation plan evaluation contemplated under FAR provision 52.222-46. We discuss below the labor category of junior contract specialist as a representative example.

The RFQ described the functional duties of junior contract specialist as follows:

Functional Responsibilities: Provide basic support and assistance in all areas of [FAR] based Federal procurement in which expertise is required such as: preparing or reviewing pre-procurement packages, actively participating in developing and managing acquisition plans, preparing/researching support documentation, making quality recommendations to the Contracting officer, handling and resolving problems, validating data, and otherwise completing actions needed to successfully advertise, solicit, construct, award, administer and/or closeout Government contracts or task/delivery orders; experience in automated systems and software applications including Microsoft Word, Excel, Outlook, SharePoint, Adobe Acrobat, and teleconference applications. Able to execute acquisitions within prescribed procurement acquisition lead times (PALT) unless times extended by Contracting Officer.

RFQ at 45-46. Required experience and education for the junior contract specialist was specified as follows:

Experience: 4+ years of experience supporting and developing government procurements in acquisitions which may include some operational contracting experience in service, construction, supplies and/or Architect and Engineering. Shall be able to clearly articulate in writing and possess skills and abilities necessary to work in a team environment and communication skills to support project operations that result in quality work. Basic knowledge of business and industry practices, sources of supply, cost factors, and requirements characteristics is paramount. Experience in contract writing program (PRISM Integrated Acquisition System) is strongly desired.

Education: Baccalaureate degree from an accredited institution desired.

Id. at 45.

As noted above, the term “professional employees” is defined as an employee whose work requires “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction.” 29 C.F.R. § 541.300(a)(2)(i). The regulations further explain that the phrase “customarily acquired by a prolonged course of specialized intellectual instruction” refers to “professions where specialized academic training is a standard prerequisite for entrance into the profession,” as may be evidenced by an “appropriate academic degree.” *Id.* at § 541.301(d). As an example, section 541 explains that paralegals and legal assistants generally do not meet this definition of professional employees “because an advanced specialized academic degree is not a standard prerequisite for entry into the field.” *Id.* at § 541.301(e)(7). On the other hand, for example, physician assistants who have successfully completed four academic years of pre-professional and professional study from an accredited physician assistant program and who are certified by the National Commission on Certification of Physician Assistants generally do meet this definition. *Id.* at § 541.301(e)(4).

As set forth in the PWS, the junior contract specialist was required to have only “basic knowledge of business and industry practices,” among other things. RFQ at 45. In addition, while a Baccalaureate degree is desired as noted, the PWS does not contain a degree requirement for the junior contract specialist position, does not contain any sort of training requirement for the position, and suggests that qualification for this position can be obtained primarily through “on-the-job-training.” Given this description, we find that these position requirements do not contemplate “knowledge of an advanced type” as described in section 541.¹¹ We also find the knowledge requirements for the junior contract specialist are not of the sort “customarily acquired by a prolonged course of specialized intellectual instruction” as there is no advanced specialized academic degree or training that is a prerequisite for this position.

As our Office has previously found, the professional employee definition generally does not apply to occupations in which most employees have acquired their skill by experience rather than advanced specialized instruction. *Sabre Systems, Inc.*, B-420090.4, Jan. 17, 2023, 2023 CPD ¶ 30 at 7. We therefore find that the junior contract specialist as described in the PWS to be similar to the paralegal example in the C.F.R. In this regard, the solicitation does not identify any training certificate or degree requirement for this position. Based on this record, we find unreasonable the agency’s

¹¹ Similarly, the mid-level contract specialist was required only to have “intermediate knowledge” of business and industry practices, and also was not required to have any sort of degree or particular training. RFQ at 45.

inclusion of the junior contract specialist position in its total compensation evaluation pursuant to FAR provision 52.222-46.¹²

Further, we disagree with USDA's argument that Veterans Management was not competitively prejudiced by the agency's flawed analysis. The agency maintains that the protester's pricing would have deviated from the awardee's pricing by an even greater amount if it considered only the contractor project manager and certain senior contract specialist positions in the evaluation, and that this would further decrease the agency's confidence in the protester's quotation. MOL at 6-7. We afford this post-protest argument little weight. The agency has not explained, for example, why it would have a decreased level of confidence in the entirety of the protester's quotation where the evaluation would consider only two out of four labor categories required by the PWS, and only, at most, [DELETED] out of [DELETED] full-time equivalent employees.¹³ This demonstrates at least a reasonable possibility of prejudice. We resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis to sustain a protest. See *Patriot Solutions, LLC*, B-413779, Dec. 22, 2016, 2016 CPD ¶ 376 at 5.

Accordingly, because we find USDA's inclusion of all labor categories in its FAR provision 52.222-46 evaluation to be unreasonable, and further find Veterans Management was competitively prejudiced in this regard, we also sustain the protest on this basis.

Mathematical Errors in the Price Evaluation and Flawed Best-Value Determination

Veterans Management argues that USDA's evaluation of pricing contained mathematical errors, which the agency then relied upon in making its best-value tradeoff determination. Protest at 20-22. The agency does not dispute that its evaluation

¹² While not specifically addressed here, we also have reviewed Veterans Management's arguments with respect to USDA's decision to include in its total compensation evaluation the mid-level contract specialist and senior contract specialist (non-team leads) positions. Based on our review of the record and the requirements for these positions, we similarly find the agency unreasonably included these positions in its evaluation, because these positions are also not "professional employees" as defined by 29 C.F.R. part 541.

¹³ Veterans Management's quotation indicates that it proposed [DELETED] contractor project manager, [DELETED] senior contract specialists, [DELETED] mid-level contract specialists, and [DELETED] junior contract specialists for each year of the contract. Protest, exh. F, Veterans Management Price Volume at 13. While not all of the senior contract specialists would also be considered team leads, even if the agency included all the senior contract specialists in a 52.222-46 evaluation, plus the contractor project manager, this would still represent only approximately [DELETED] percent of the proposed full-time equivalent employees.

contained mathematical errors, and instead contends that any error in its price evaluation “was applied evenly to all [quotations] and did not [a]ffect the position for any [vendor] for award of the [contract].” MOL at 4.

In light of our findings above and recommendation that USDA reevaluate quotations in a manner consistent with FAR provision 52.222-46 and this decision, we need not resolve these discrepancies. Upon reevaluation, the current evaluation results will no longer be relevant.

RECOMMENDATION

We recommend that the agency reevaluate vendors’ quotations in accordance with the terms of the RFQ, FAR provision 52.222-46, and the discussion in this decision. We further recommend that the agency perform a new best-value tradeoff determination and, if a vendor other than Stafford is selected for award, we recommend that the agency terminate the award to Stafford for the convenience of the government and make a new award, if otherwise proper. Finally, we recommend that the agency reimburse Veterans Management its costs associated with filing and pursuing these protests, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d)(1). Veterans Management should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after the receipt of this decision. *Id.* at § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel