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Decision

Matter of: SMS Data Products Group, Inc.

File: B-423341; B-423341.2; B-423341.3

Date: May 29, 2025

Eric S. Crusius, Esq., Hunton Andrews Kurth LLP, and Richard J. Ariel, Esq., Holland & Knight, LLP, for the protester.

Alexander B. Ginsberg, Esq., and Robert C. Starling, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Abacus Technology Corporation, the intervenor.

Colonel Nina R. Padalino, Aaron J. Weaver, Esq., Major Oladipo O. Odejide, and Melissa M. Garcia, Esq., Department of the Air Force, for the agency.

Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is not premature where the protester did not timely submit questions to the agency and therefore the debriefing was considered to be concluded on the date it was delivered, and the protest was filed within 10 days of that date.

2. Protest of the agency's evaluation of the awardee's price and professional employee compensation plan is denied where the agency's evaluation was reasonable and consistent with Federal Acquisition Regulation provision 52.222-46 and the terms of the solicitation.

3. Protest that the agency engaged in misleading discussions is denied where the record shows the protester exercised its business judgment and increased its price rather than provide additional information to justify labor rates identified by the agency as unrealistic during exchanges with offerors.

4. Protest challenging the agency's best-value decision is denied where the agency's decision is reasonable, consistent with the terms of the solicitation, and adequately documented.

DECISION

SMS Data Products Group, Inc., a small business of McLean, Virginia, protests the issuance of a task order to Abacus Technology Corporation, a small business of Chevy

Chase, Maryland, under fair opportunity proposal request (FOPR) No. FA8773-24-R-0002, issued by the Department of the Air Force for intranet control support services to operate, manage, and defend the Air Force's portion of the Department of Defense information network. The protester argues that various aspects of the agency's evaluation of the offerors' price proposals was unreasonable, the agency engaged in misleading discussions with SMS, and the best-value decision is flawed.

We deny the protest.

BACKGROUND

The agency issued the solicitation on May 21, 2024, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, set aside for small business holders of the Department of the Army's responsive strategic sourcing for services multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer's Statement (COS) at 3. SMS was the incumbent contractor and previously performed the same services sought by this procurement. The FOPR contemplated issuance of a fixed-price task order with a period of performance to include a 2-month transition period, a 10-month base period, four 12-month option periods, and a 6-month option to extend. Agency Report (AR), Tab 35, Instruction to Offerors (ITO) Amend. 1 at 9.

The FOPR stated that proposals would be evaluated under the following factors: technical, past performance, and price. *Id.* at 15. The technical factor would be rated as either acceptable or unacceptable. *Id.* Past performance was to be assessed and assigned one of the following confidence ratings: substantial, satisfactory, neutral, limited or no confidence. *Id.* at 18. Regarding price, the FOPR stated that total evaluated price would be evaluated for completeness, price reasonableness, and unbalanced pricing. *Id.* at 19. In addition, the FOPR required that offerors submit professional employee compensation plans and stated they would be evaluated in accordance with FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* at 20.

The FOPR further stated:

Proposals must be technically acceptable to be awardable. Past performance is considered more important than Price, and the Government may choose to trade past performance for price on technically acceptable proposals. . . . All offerors judged to have a "Substantial Confidence" past performance assessment will be considered equal and contract award will be made to the lowest price offerer whose Professional Compensation Plan is considered realistic. The Decision Authority shall make an integrated assessment award decision to the offeror deemed as providing the best overall value to the Government.

Id. at 14.

The agency received nine proposals in response to the solicitation, including from SMS and Abacus. COS at 4. Following the initial evaluation of proposals, the agency elected to engage in technical interchanges with five offerors and subsequently engaged in interchanges with four of those offerors regarding their professional employee compensation plans. *Id.* at 10. In its final evaluation of proposals, the agency concluded that both SMS and Abacus were acceptable under the technical factor and assigned both offerors ratings of substantial confidence under the past performance factor. AR, Tab 120, Fair Opportunity Decision Document (FODD) at 22. The agency also concluded that both offerors submitted realistic professional employee compensation plans; SMS's final proposed price was \$128,545,851, and Abacus's final proposed price was \$116,202,405. *Id.*

On February 11, 2025, the contracting officer, who also served as the source selection authority (SSA), awarded the task order to Abacus and provided SMS with a combined unsuccessful offeror letter and written debriefing. AR, Tab 118, SMS Unsuccessful Offeror Notice and Debriefing. On February 21, SMS filed its protest.¹

DISCUSSION

The gravamen of the protest is that the agency failed to reasonably evaluate Abacus's lower price as presenting a risk to successful contract performance. The protester also argues that because the agency's discussions led SMS to increase its price, the award to Abacus at a lower price demonstrates that the agency's discussions with SMS were misleading. We address these arguments below.

Timeliness

As an initial matter, the intervenor repeatedly argues that the protest should be dismissed in its entirety as premature. Intervenor Req. for Dismissal at 3-6; Intervenor Reply in Support of Req. for Dismissal at 1-3; Intervenor Comments at 2, 4-6. Abacus argues that the protest was prematurely filed prior to the conclusion of SMS's "enhanced debriefing" because SMS was awaiting answers to questions submitted to the agency after it received its combined unsuccessful offeror letter and written debriefing. Intervenor Req. for Dismissal at 5. The agency concurs with the intervenor's request. Agency Concurrence with Intervenor Req. for Dismissal at 1.

As noted, the procurement here was conducted using FAR subpart 16.5 procedures, which state that "[t]he procedures at [FAR] 15.506 shall be followed when providing [post award] debriefing to unsuccessful awardees." FAR 16.505(b)(6)(ii). Section 15.506 states: "An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award . . .

¹ The awarded value of the task order exceeds \$35 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority of title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

shall be debriefed and furnished the basis for the selection decision and contract award.” However, the agency did not wait for the protester to request a debriefing as contemplated by FAR section 15.506 and instead provided the protester a written debriefing along with its unsuccessful offeror notice. AR, Tab 118, SMS Unsuccessful Offeror Notice and Debriefing.

In the unsuccessful offeror notice, the agency stated that “in accordance with [Department of Defense FAR Supplement (DFARS)] 215.506-70 the Government provides each offeror the opportunity to submit additional written questions . . . in writing, no later than Friday, 14 February 2025.” *Id.* at 2. In this regard, DFARS section 215.506-70(a) provides procedures for an “enhanced debriefing” and states that contracting officers shall “[p]rovide an opportunity to submit additional questions related to the required debriefing not later than 2 business days after receiving the [post-award] debriefing.” This same regulation also states that a post-award debriefing is not considered to be concluded until the later of “(1) the date that the [post-award] debriefing is delivered, orally or in writing; or (2) if additional written questions related to the debriefing are timely received, the date the agency delivers its written response.” DFARS 215.506-70(c). Since the debriefing was provided to SMS on February 11, the due date for submission of additional questions as required by DFARS section 215.506-70 was February 13, not February 14 as stated in the unsuccessful offeror notice. The protest explained:

In SMS’s Unsuccessful Offeror Notice, the Contracting Officer stated that “in accordance with DFARS 215.506-70 the Government provides each offeror the opportunity to submit additional written questions as part of an enhanced debriefing.” [] The Contracting Officer requested the questions by February 14, 2025, and SMS submitted questions on this date. However, February 14, 2025, is three days after SMS received its [post award] debriefing on February 11, 2025, and DFARS 215.506-70(a) requires written questions to be submitted “not later than 2 business days after receiving the [post award] debriefing.” Therefore, while SMS did submit written questions for debriefing, in an abundance of caution regarding GAO’s protest deadlines, SMS is filing the current protest.

Protest at 2 n.2.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Beckman Coulter, Inc.*, B-421748, July 28, 2023, 2023 CPD ¶ 180 at 3. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

An exception to our general timeliness rule is a protest that challenges “a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required,” where a protest would be considered timely if filed within 10 days after the debriefing. *Id.* This exception to our timeliness rules does not apply where an agency provides a debriefing that is not required. *Exceptional Software Strategies, Inc.*, B-416232, July 12, 2018, 2018 CPD ¶ 237 at 5. Consequently, where a debriefing is not legally required, a protester that delays the filing of a protest until after that debriefing may be untimely as to any grounds of protest it knew or should have known more than 10 days before filing the protest. 4 C.F.R. § 21.2(a)(1)-(2); *Done By Native, LLC*, B-422270, Mar. 29, 2024, 2024 CPD ¶ 87 at 3.

In order to extend its debriefing, section 215.506-70(a) of the DFARS required the protester to submit questions to the agency no later than two business days after receiving its written debriefing on February 11. The protester submitted its questions on February 14, one day later than the deadline set by the regulation. Therefore, because SMS did not timely submit its questions pursuant to DFARS section 215.506-70(a), the debriefing was considered to be concluded on the date the debriefing was delivered, *i.e.*, February 11. Under these circumstances, the protest was required to be filed within 10 days of when the protester knew or should have known its basis of protest and SMS could not wait to file the protest until the agency provided answers to its untimely submitted questions. Accordingly, we conclude that the protest was not premature and was timely filed.²

Price Evaluation

The protester argues that the agency performed a flawed analysis of Abacus’s proposal under FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. According to SMS, it proposed rates largely in line with its incumbent rates, and the agency failed to recognize that Abacus’s lower total price--10 percent less than the total price proposed by SMS--is clearly unrealistic. The protester argues that

² The intervenor also raised several other arguments for dismissal, including SMS’s allegation that the agency should have found Abacus unacceptable under the management/staffing plan subfactor because Abacus’s proposed price was lower than the price proposed by SMS. Intervenor Req. for Dismissal at 8. By itself, the fact that Abacus proposed a lower price fails to demonstrate that Abacus’s proposal could not have included an acceptable response to the information required by the solicitation. Indeed, the FOPR did not require that the agency consider Abacus’s proposed price under the management/staffing plan subfactor, and the protester provided no other support for its argument that Abacus should have been found unacceptable. See Protest at 14-15. Allegations that facially do not demonstrate improper agency action (*e.g.*, that the agency violated the terms of the solicitation) are legally insufficient. *Eagle Hill Consulting, LLC*, B-421938.2, B-421938.3, Dec. 20, 2023, 2023 CPD ¶ 288 at 4. Accordingly, we dismissed this protest allegation and did not require the agency to address it in its report. Electronic Protest Docketing System No. 25; 4 C.F.R. § 21.5(f). We denied the intervenor’s requests to dismiss SMS’s other protest grounds.

Abacus will not be able to retain the professional employees required for successful contract performance, and the agency should have rejected its proposal. Protest at 10-13. The agency argues that its evaluation was fair, reasonable, and consistent with the terms of the FOPR and FAR provision 52.222-46. Memorandum of Law (MOL) at 10-18.

The purpose of a review of compensation for professional employees is to evaluate each offeror's ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention. *ENGlobal Gov't Servs., Inc.*, B-419612.3, Dec. 15, 2021, 2022 CPD ¶ 12 at 11. FAR provision 52.222-46 requires a two-prong evaluation of professional employee compensation plans. The first prong is, in effect, a price realism evaluation of proposed compensation, to determine whether an offeror understands the contract requirements and has proposed a compensation plan appropriate for those requirements. *IBSS Corp.*, B-422757 *et al.*, Oct. 24, 2024, 2024 CPD ¶ 258 at 8. The second prong requires an agency to determine whether a proposal "envision[s] compensation levels lower than those of predecessor contractors" by comparing proposed compensation rates to those of the incumbent. *Guidehouse LLP; Jacobs Tech. Inc.*, B-420860 *et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 7.

The comparison of an offeror's proposed professional employee compensation to that of the incumbent contractor is a separate inquiry from the realism of the proposed plan and its impact on recruiting and retention. *The Bionetics Corp.*, B-419727, July 13, 2021, 2021 CPD ¶ 259 at 5. If the agency determines that the awardee's proposal envisions lower compensation levels compared to the incumbent contractor, then the agency must further evaluate the awardee's proposed compensation plan on the basis of maintaining program continuity, among other considerations. FAR provision 52.222-46(b); *OBXtek, Inc.*, B-422057, B-422057.2, Jan 2, 2024, 2024 CPD ¶ 18 at 6.

Here, the FOPR required that offerors submit "a total compensation plan setting forth base rate hourly salary and fringe benefits proposed for the professional employees who will work under the contract," to include a professional compensation matrix and a professional compensation plan narrative. ITO Amend. 1 at 10-12. The FOPR also required that offerors submit a pricing labor matrix, a template of which was provided with the FOPR as an attachment. *Id.* at 12. The FOPR stated that the offeror's price proposal would be evaluated for completeness, price reasonableness, and unbalanced pricing based upon the total evaluated price proposed. *Id.* at 19. In addition, the FOPR stated: "The Professional Employee Compensation Plan will be evaluated for realism and is separate from the [total evaluated price] evaluation." *Id.*

With respect to the evaluation of the professional employee compensation plans, the FOPR provided:

The Government will compare proposed rates to incumbent rates if available. If necessary (for example, where comparison to incumbent rates is not feasible), the Government may validate the offeror's

supporting data and use a variety of resources and methods to evaluate the realism of the offeror's Professional Compensation Plan. This includes, but is not limited to: comparing prices paid on prior or similar contracts, comparison of proposed pricing from multiple offerors, market data from one or multiple sources (e.g., Watson & Wyatt, Economic Research Institute, Bureau of Labor Statistics, Salary.com, etc.), or a combination of the above.

Id. at 20. The FOPR further noted that for proposed compensation that was lower than the incumbent prices, the agency would evaluate the proposed compensation on the basis of "maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees." *Id.*

The record shows that the agency reviewed Abacus's professional employee compensation plan and concluded: "Abacus's proposed fringe benefits were considered when evaluating total compensation, and the Government determined they proposed sufficient fringe benefits for recruitment and retention when compared to incumbent fringe benefits offered and industry standards." AR, Tab 112, Abacus Evaluation at 25. The record further shows that the agency computed average compensation rates across all offerors by labor category and used this data along with market data from Economic Research Institute (ERI) and Salary.com to assess the labor category rates proposed by each offeror. *Id.* The agency also compared proposed rates to incumbent rates, and explained its evaluation, in pertinent part, as follows:

The Government noted any incumbent rates that were significantly lower (more than 4 [percent]) than market data and the competition average to assess the reliability of the incumbent rate for recruitment of new employees and retention of current employees. The 4 [percent] measure was judgmentally determined by the Government considering the current employer cost index of 4.1 [percent], meaning that a difference of more than 4 [percent] is not readily explained by fluctuations in the labor market. For those labor categories where the incumbent was significantly lower than market and competition, the Government determined it would evaluate proposed rates further against the market and competition data, [in accordance with] the FOPR and FAR 52.222-46, to consider the impact of the proposed rate on recruiting and retention, whether the rate is realistic, and to determine the offeror's ability to provide uninterrupted high-quality work. . . . Where the Government found the incumbent rate to be reliable, and the offeror's proposed rate was above the incumbent compensation levels, the proposed rate was determined to be realistic.

* * * * *

In many cases the incumbent evaluation rate was well above (between 4 [percent] and 42 [percent]) market and competition. Where the proposed rate was below the incumbent rate (envisioning compensation levels

lower than the incumbent), the Government evaluated the proposed rate “on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees” by comparing to the competition average, Salary.com market data, and ERI market data. Proposed rates higher than 4 [percent] below any of these data points were determined to be realistic.

For rates where the incumbent rate was potentially unreliable as described above or where no incumbent rate was available, the Government further evaluated against both market data points and the competitive average. The Government determined a rate to be unrealistic if it was 4 [percent] or more below all data points, including the competitive average, Salary.com market data, ERI market data, and the incumbent rate (if available and reliable).

Id. at 26-27.

The record shows that two-thirds of Abacus’s proposed rates were higher than the incumbent rates; the one-third of Abacus’s rates that fell below the incumbent rates were otherwise higher than at least one of the rates used by the agency for comparison (*i.e.*, average competition rate, ERI, or Salary.com). *Id.* at 28-29. The agency concluded that the price proposal submitted by Abacus was complete, reasonable, and balanced, and its professional employee compensation plan was realistic. *Id.* at 30.

In contrast, in its evaluation of SMS, the agency identified six labor category rates that were more than four percent below the rates used for comparison; in other words, SMS proposed rates below the incumbent rate, or where an incumbent rate was unavailable or unreliable, SMS proposed rates more than four percent below the average competition rate, ERI, and Salary.com. The record does not support the protester’s argument that Abacus’s proposal should have been rejected because of its much lower price. On the contrary, the record shows that Abacus’s proposed labor rates were all higher than either the incumbent rates or the other data used by the agency (*i.e.*, average competition rate, ERI, or Salary.com). On this record, we find no basis to question the agency’s conclusion that Abacus’s professional employee compensation plan was realistic and find that the agency’s evaluation was reasonable and consistent with the requirements of FAR provision 52.222-46.³

³ The protester maintains that the agency’s evaluation is flawed because the agency compared base hourly salary rates rather than fully burdened rates that would include fringe benefits. 2nd Supp. Protest & Comments at 4-7. However, as explained by the agency, rather than using fully burdened rates, its evaluation utilized incumbent payroll data because this information provided actual employee salary information. COS at 11-12. Our Office has previously found that an agency’s use of burdened labor rates in an evaluation under FAR provision 52.222-46 did not permit meaningful consideration of the compensation to be paid to employees. See *MicroTechnologies, LLC*, B-413091, (continued...)

The protester also argues that the agency performed a flawed analysis of Abacus's price under Department of Defense FAR Supplement (DFARS) provision 252.204-7024 and would have found Abacus to be unacceptable if it compared Abacus's rates to historical prices paid. Protest at 13-14; 2nd Supp. Protest & Comments at 7-8. SMS contends that under this DFARS clause, the agency was required to evaluate the price risk of Abacus's total proposed price.

The DFARS provision 252.204-7024 defines price risk as "a measure of whether a proposed price for a product or service is consistent with historical prices paid for that item or service." DFARS provision 252.204-7024(a). The DFARS mandates that the supplier performance risk system (SPRS) be used in the evaluation of an offeror's performance and requires the contracting officer to "consider SPRS risk assessments during the evaluation of quotations or offers received in response to this solicitation as follows: . . . (2) Price risk will be considered in determining if a proposed price is consistent with historical prices paid for a product or a service or otherwise creates a risk to the Government." DFARS provision 252.204-7024(c)(2).

The agency argues that it properly evaluated Abacus's price in accordance with this requirement, and consistent with the terms of the FOPR. MOL at 18-22. The contracting officer explains that SPRS functionality is currently limited to running a search based on a part number or other identification (such as a national item identification number or national stock number). The contracting officer states that for 100 percent service contracts that are not associated with a part number or product code, the price risk for that particular service is not available. COS at 22-23. The record includes a declaration from the SPRS program manager, in which he confirms:

At present time, if a service contract does not have an associated [Product Service Code (PSC)] or Manufacturer [Commercial and Government Entity (CAGE)] Code with a Part Number or [National Item Identification Number (NIIN)], the SPRS Item/Price Risk Report search will not be found which is equivalent to yielding a "not available" result, indicating there is no performance risk information in SPRS for that particular PSC/part number combination.

AR, Tab 130, Decl. of SPRS Program Manager at 2.

B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 8-14. Further, as noted, the agency also separately evaluated Abacus's proposed fringe benefits and determined they were sufficient for recruitment and retention "when compared to incumbent fringe benefits offered and industry standards." AR, Tab 112, Abacus Evaluation at 25. We find this explanation is reasonable and that the evaluation satisfies the FAR requirement to evaluate each offeror's ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention.

On this record, we find the agency's explanation of how it used the SPRS reasonable and consistent with the requirements of DFARS provision 252.204-7024. Accordingly, this allegation is denied.⁴

After review of the initial agency report, the protester additionally contends that the agency failed to perform a proper price reasonableness analysis. SMS argues that despite Abacus's lower price, Abacus proposed labor category rates that were well above the incumbent rate, and the record fails to document why these rates were found to be reasonable. 2nd Supp. Protest & Comments at 3-4. The agency argues that this allegation fails to state a valid basis of protest because the FOPR did not require a price reasonableness assessment of individual labor category rates, and it properly evaluated total evaluated prices for reasonableness, consistent with the terms of the FOPR. Supp. COS/MOL at 7-9.

We agree with the agency that the solicitation did not require that the agency assess whether individual labor category rates were too high. As our decisions have stated, the purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. *Tetra Tech, Inc.*, B-409095, B-409095.2, Jan. 17, 2014, 2014 CPD ¶ 108 at 7. The solicitation clearly stated that total evaluated price would be evaluated for price reasonableness. ITO Amend. 1 at 14, 19. There was nothing in the solicitation that provided for the agency to analyze individual labor rates for reasonableness. Accordingly, we dismiss this argument because it fails to state a valid basis of protest. *Eagle Hill Consulting, LLC*, *supra*.

Misleading Discussions

The protester argues that the agency engaged in misleading discussions with SMS because the agency informed SMS that some of its rates were unrealistically low and led SMS to increase its price yet made award to Abacus at a much lower evaluated price. Protest at 15. The agency argues that exchanges were not misleading, and it reasonably identified rates proposed by SMS that were found to be unrealistically low, but did not require that SMS increase them. The agency avers that SMS elected to increase its price rather than justify the rates it initially proposed and that SMS's decision to raise its price fails to demonstrate that the agency's exchanges were misleading. MOL at 22-25.

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task and delivery order competitions conducted under FAR subpart 16.5, such as the procurement here. *Engineering Design Techs., Inc.*, B-413281, Sept. 21, 2016, 2016 CPD ¶ 265 at 5. In this regard, FAR

⁴ The protester also alleged that the agency failed to determine whether Abacus had a score in the SPRS as required by the FOPR and DFARS provision 252.204-7019 and clause 252.204-7020. 2nd Supp. Protest & Comments at 2-3. After review of the supplemental agency report, the protester withdrew this allegation. Supp. Comments at 1.

section 16.505 does not establish specific requirements for discussions in a task order competition; nonetheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. *CGI Fed. Inc.*, B-403570 *et al.*, Nov. 5, 2010, 2011 CPD ¶ 32 at 9. In our decisions addressing an agency's obligations in conducting discussions under FAR part 15, we have stated that an agency may not mislead an offeror through the framing of a discussion question into responding in a manner that does not address the agency's actual concerns, or otherwise misinform the offeror concerning a problem with its proposal. *Refinery Assocs. of Texas, Inc.*, B-410911.2, Mar. 18, 2015, 2015 CPD ¶ 116 at 6.

As discussed, the agency identified six labor category rates that it considered to be unrealistic and issued a notice to SMS.⁵ AR, Tab 99, SMS Professional Compensation Interchange 003 at 2-3. That notice stated:

SMS may choose to revise all or some of the rates at their own discretion or provide adequate justification that the current proposed rates are realistic and meet the criteria in FAR 52.222-46. If SMS revises their proposal, please utilize an updated complete Professional Compensation Matrix (Attachment 7). If necessary, the Subcontractors may provide this updated attachment to the Government directly. The supporting information for the proposed professional compensation information shall be included in the Contractor Response section below.

AR, Tab 99, SMS Professional Compensation Interchange 003 at 3. The record shows that SMS increased its price, and its final proposal was found to be complete, reasonable, balanced, and its professional employee compensation plan was realistic. AR, Tab 111, SMS Evaluation at 30.

The protester argues that blaming SMS for raising its price is not a fair response. SMS contends that it had no choice but to raise its price and insists that making award at a lower price is evidence the discussions were misleading because it contradicts the information given to SMS during exchanges. 2nd Supp. Protest & Comments at 8-9. However, the protester has not shown that following the price evaluation procedures, as discussed above, the agency's concerns that the specific rates identified in the notice were incorrect. And rather than give SMS no choice but to raise its price, the notice alternatively afforded SMS the opportunity to provide adequate justification that the initially proposed rates were realistic and met the criteria in FAR provision 52.222-46. The protester elected to increase its price rather than provide additional justification to substantiate its initial rates. Thus, the agency did not mislead the protester during discussions and instead properly identified a concern with the protester's low rates. In sum, the record does not support the protester's contention that the agency misled SMS into increasing its labor rates and price. Accordingly, we deny this allegation.

⁵ The agency also identified rates proposed by SMS's subcontractors found to be unrealistic. AR, Tab 99, SMS Professional Compensation Interchange 003 at 3.

Best-Value Tradeoff

Finally, SMS argues that the agency failed to perform and inadequately documented its best-value tradeoff. The protester argues that the agency should have found Abacus's proposal unacceptable, and but for the misleading discussions, SMS would have been awarded the contract. Protest at 16. The agency argues that the best-value decision is reasonable and, consistent with the FOPR, award to SMS at an approximately \$12 million price premium cannot be justified. MOL at 27-28.

As noted, in its final evaluation of proposals, the agency concluded that both SMS and Abacus were technically acceptable with substantial confidence under the past performance factor, and Abacus proposed a lower price. AR, Tab 120, FODD at 22. The FOPR stated:

All offerors judged to have a "Substantial Confidence" past performance assessment will be considered equal and contract award will be made to the lowest price offerer whose Professional Compensation Plan is considered realistic. The Decision Authority shall make an integrated assessment award decision to the offeror deemed as providing the best overall value to the Government.

ITO Amend. 1 at 14. As discussed above, we find no merit to the protester's challenge to the agency's evaluation of Abacus's price proposal or its argument that the agency engaged in misleading discussions with SMS. Thus, given the solicitation language, we find no basis to conclude that the agency's determination that Abacus presented the best value to the government is unreasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel