U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Obsidian Solutions Group, LLC

File: B-416343; B-416343.3

Date: August 8, 2018

Jon D. Levin, Esq., J. Andrew Watson, III, Esq., Michael Rich, Esq., Emily J. Chancey, Esq., and W. Brad English, Esq., Maynard Cooper & Gale, PC, for the protester.
Caitlin Conroy, Esq., Fred Geldon, Esq., and Paul R. Hurst, Esq., Steptoe & Johnson LLP, for Wittenberg Weiner Consulting, LLC, the intervenor.
Jason R. Smith, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force, for the agency.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Challenge to agency's evaluation of awardee's past performance is denied where the evaluation was conducted in accordance with the stated criteria, which included consideration of subcontractor performance, and was reasonable.

2. Challenge to agency's evaluation of awardee's professional compensation is denied where the evaluation was reasonably based on a comparison of the offerors' compensation rates to the Federal employee pay rates because incumbent compensation rates were not available, and the agency's evaluation was otherwise reasonable.

3. Allegation that the agency improperly modified the contract post-award is denied where the record demonstrates that the contract's scope of work and fixed-price labor rates were not modified; rather, the contract incorporated the indefinite-delivery, indefinite-quantity not-to-exceed threshold amount instead of the total evaluated price of the awardee.

DECISION

Obsidian Solutions Group, LLC, an 8(a) small business located in Fredericksburg, Virginia, protests the award of a contract to Wittenberg Weiner Consulting, LLC (WWC), an 8(a) small business located in Lutz, Florida, by the United States Special Operations Command (USSOCOM) under to request for proposals (RFP) No. H92222-18-R-0001 for subject matter experts (SMEs) and services under the USSOCOM Enterprise Wide Training and Exercise Program (UEWTEP) II.[1] The protester challenges the agency's evaluation of the awardee's past performance and professional compensation, the award decision, and alleges that USSOCOM improperly altered the contract after award.

We deny the protest.

BACKGROUND

The agency issued the RFP on December 29, 2017, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15 as a total 8(a) small business set-aside. RFP at 1, 11. The solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) labor hour contract with fixed-priced labor hour rates and a 5-year period of performance.[2] Id. at 50; 59. The RFP provided for award on a best-value basis considering four factors listed in descending order of importance: management and transition; past and present performance (past performance); training; and price/cost. Id. at 56. The non-price/cost factors, when combined, were significantly more important than price/cost. Id. at 51.

The agency received ten timely proposals in response to the solicitation by January 31, 2018. The source selection evaluation board (SSEB) evaluated the proposals, and on March 2, the source selection authority (SSA) established a competitive range of three offerors, including Obsidian and WWC. Agency Report (AR), Tab 13, SSEB Evaluation, at 2. The agency entered into discussions with the competitive range offerors and requested final proposal revisions (FPRs). Id. On March 27, all three offerors submitted FPRs. Id. at 3. The SSEB evaluated the FPRs and arrived at the following ratings for Obsidian and WWC:

[1] The services solicited include: planning, design/scripting, integrating, coordinating, managing, and executing approved training and exercise programs, information and data analysis, joint collective training integrating cyberspace, and building partner nations capacity activities with the joint exercise and training program. RFP at 58.

[2] The solicitation stated that the agency would issue task order one for core activities at contract award with a period of performance of 12 months. RFP at 59. Task order two would be issued for core activities for year two of the contract, and so on with task orders three, four, and five, each to be issued for one year. Id. The solicitation also provided that discretionary task orders would be issued throughout the contract period of performance (years one through five), as requirements arise. Id.

	Obsidian	WWC
Management/Transition	Outstanding	Good
Training	Outstanding	Outstanding
Past Performance	Substantial Confidence	Substantial Confidence
Total Evaluated Price	$186,556,089	$161,763,848

Id. at 35.

The SSEB also evaluated the offerors' total employee compensation plan for realism pursuant to the terms of the solicitation and FAR provision 52.222-46. Id. at 13-15, 31-33. The SSEB concluded that while both Obsidian's and WWC's proposals contained unrealistically low compensation for one out of 70 positions, overall, the offerors' proposed compensation was realistic. Id. at 15, 33.

The SSEB provided its consensus evaluation report to the source selection advisory committee (SSAC). AR, Tab 16, SSAC Report, at 2. The SSAC conducted a comparative analysis of the proposals and made an award recommendation to the SSA. Id. at 3-7. In this regard, the SSAC concluded that although Obsidian's proposal was rated higher than WWC under the management/transition factor, the impacts of the strengths and overall reduced risk to contract performance offered by Obsidian did not justify the $24.8 million higher total evaluated price over WWC. Id. at 5-6. The SSAC noted that with respect to the price difference, "the total mark-up, which shows the difference between total employee compensation and the proposed fully burdened labor rates is [DELETED]% for OSG [Obsidian], while it is [DELETED]% for WWC. This also contributes to the $24.8 [million] difference in [the] total evaluated price between WWC and OSG [Obsidian]." Id. at 5. The SSA completed an independent review and integrated assessment of the three proposals, which considered the relative merits of each proposal. AR, Tab 18, at 6-9. The SSA concluded that the agency could not justify paying the premium for the benefits associated with Obsidian's proposal. Id. at 8. Thus, the SSA concurred with the SSAC's recommendation, and selected WWC for award of the UEWTEP II contract. Id. at 9.

Obsidian received notice of the award on April 25. As relevant here, along with notifying Obsidian that it did not receive the award, the notice provided Obsidian's and WWC's overall ratings and WWC's total evaluated price ($161,763,848). Protest attach. A, Notice of Award, at 1-2. On April 27, the agency posted the award announcement on FedBizOpps.gov, which listed the award amount as $200 million. Protest attach. F, FedBizOpps.gov Award Announcement, at 1. After receiving a debriefing, Obsidian filed this protest.

DISCUSSION

Obsidian challenges the agency's evaluation and award decision. The protester argues that the agency's evaluation of WWC's past performance was flawed and that the agency failed to properly evaluate WWC's professional compensation. For these reasons, Obsidian argues that the best-value tradeoff decision was unreasonable.

Obsidian also asserts that the agency improperly changed the contract requirements after award of the contract. While we do not discuss every argument raised by the protester, we have reviewed all of Obsidian's allegations and find no basis to sustain the protest.

Past Performance Evaluation

Obsidian alleges that the agency's evaluation of WWC's past performance was flawed. The protester argues that WWC, as the prime contractor, has no record of performance managing a world-wide, interagency, multi-service training and exercise program such as UEWTEP II. Obsidian contends that the agency's assignment of a substantial confidence rating to WWC's past performance reflects that the agency gave excessive credit to WWC's subcontractors contrary to the solicitation criteria. In response, the agency argues that the solicitation did not specify the weight to be given to subcontractor references and explicitly required consideration of both the prime and its subcontractors' past performance. The agency contends that the SSEB properly considered the recency and relevancy of each prime and subcontractor reference and reasonably concluded that the agency had a high expectation that WWC would successfully perform the required effort, which resulted in the assignment of a substantial confidence rating. Based on our review of the solicitation and the record, we find that the agency's evaluation of WWC's past performance was reasonable.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and significance of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless it is inconsistent with the solicitation's evaluation criteria. CLS Worldwide Support Servs., LLC, B-405298.2 et al., Sept. 11, 2012, 2012 CPD ¶ 257 at 15; National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. In addition, the relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. See Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

As relevant here, the solicitation provided that an offeror's past performance proposal should include a summary page describing the role of the offeror and each subcontractor, and a past performance information sheet for each reference. RFP at 44. With respect to the past performance information sheet, the prime offeror was to submit a minimum of three and a maximum of five information sheets that identified active or completed contract/task/delivery orders for each contract they were submitting for themselves, and a minimum of one and a maximum of two information sheets for each subcontractor. Id. at 44-45. The solicitation advised that prime offerors "shall not submit past performance information sheets on a subcontractor [] that [has] no present or recent experience performing the level of work required for this effort" and "shall only submit past performance information sheets on a subcontractor [] that is expected to perform [more than] 10% of the work." Id. at 45.

The RFP defined recency as “contracts performed, all or in part, during the past three years from the date of issuance of this solicitation.” Id. at 46. Relevancy was defined, for prime offerors as “contracts and/or subcontracts performed that are most similar to this overall effort in terms of the general scope of work, number of FTEs [full time equivalents], labor positions, percent of work performed by the prime, management required, training required, subcontracts utilized, and customer supported.” Id. With respect to subcontractors, relevancy was defined as “that which reflects the area of expertise the subcontractor has performed/is performing and is projected to actually perform under this contract, (i.e. specific areas in the SOW [statement of work]/labor categories).” Id.

The RFP provided that the agency’s evaluation of past performance would consider an offeror’s, including proposed subcontractor’s, record of performance in providing services that meet the user’s needs. Id. at 54. The evaluation would focus on how well the offeror performed or is performing on recent and relevant efforts. Id. For proposed subcontractors, the evaluation would focus solely on work that the subcontractor was proposed to perform under the contract. Id. Based on a review of the information submitted with an offeror’s proposal and all other data gathered by the agency, the RFP provided that the agency would assign a level of confidence rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence.[3] Id. at 54-55.

WWC provided nine contracts as part of its past performance proposal: five contract references from WWC and two each from its two subcontractors, which were proposed to perform more than 10 percent of the work under the contract. AR, Tab 6, WWC Past Performance, at 3-45. WWC’s past performance summary provided that its subcontractors were currently performing 46 percent of the UEWTEP I incumbent contract requirements, with some areas being 100 percent performed by these proposed subcontractors. Id. at 3. The summary explained that the two subcontractors “are performing identical work, at the same size, scope, and complexity, as the work under UEWTEP II.” Id. WWC’s summary page also provided a “Past Performance Relevancy Chart” to illustrate WWC’s and its subcontractor’s relevant experience pursuant to the RFP’s SOW elements. Id. With respect to the information sheets, each sheet provided sections describing the “contract scope description” and “relevancy to this contract,” which detailed how the performance reference was relevant to the current effort. Id. 3-45.

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[3] As relevant here, the RFP defined substantial confidence as follows, “[b]ased on the offeror’s recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort.” RFP at 55. Satisfactory confidence was defined as follows, “[b]ased on the offeror’s recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort.” Id.

The agency's evaluation of the awardee's past performance considered WWC's past performance summary, the past performance information sheets, and information obtained from the past performance information retrieval system and the contractor performance assessment reporting system.[4] AR, Tab 13, SSEB Report, at 5. The SSEB conducted a detailed evaluation of each reference against the recency and relevancy criteria provided in the solicitation. AR, Tab 14, SSEB Evaluation of WWC, at 5-15. With respect to relevancy evaluation, the record demonstrates that the SSEB reviewed and assigned a rating under each of the relevancy criteria enumerated in the solicitation such as number of FTEs; percent of work performed; nature/scope of work; management; and recruitment/hiring/retention, for each reference provided. The SSEB then assigned each reference an overall relevancy rating. Id. at 10. In this regard, the SSEB found that WWC, as the prime contractor, provided three relevant and two somewhat relevant references, and WWC's subcontractors provided four very relevant references. Id. The SSEB concluded that when viewed collectively, the references gave the agency a high expectation that WWC would successfully perform the effort. AR, Tab 13, SSEB Report, at 11. Thus, the SSEB assigned WWC's past performance a substantial confidence rating. Id.

Obsidian argues that the agency's evaluation was unreasonable because WWC's references were not relevant and the agency improperly relied on subcontractor performance in reaching its conclusion that WWC's performance record warranted a substantial confidence rating. As demonstrated above, and based on our review of the evaluation record, we find that the agency's evaluation was consistent with the solicitation criteria and reasonable. While Obsidian takes issue with the judgments of the evaluators with respect to their conclusions regarding specific aspects of the agency's relevancy assessment of WWC, the protester has not demonstrated that the agency's conclusions were unreasonable.

The protester also contends that WWC failed to provide an explanation of the work to be performed by each subcontractor and that the agency failed to evaluate the subcontractor references based solely upon the work they were proposed to perform. We find no basis to support these allegations. The record demonstrates that WWC's proposal reflected the work to be performed by each of the subcontractors and the agency reasonably evaluated the references based on the work to be performed. In this regard, one of WWC's subcontractors was proposed to perform under each element of the SOW, and the other subcontractor was proposed to perform under a majority of the SOW elements. Moreover, with respect to the protester's allegation that WWC relied too heavily upon the past performance of its subcontractors, this argument is misplaced. The solicitation did not contain a weighting of past performance between the prime contractor and subcontractors, and the RFP specifically required the agency's

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[4] The agency conducted interviews with the provided points of contact for each performance reference identified for the prime contractor and each subcontractor, if their performance on the referenced contract was as a prime contractor. AR, Tab 13, SSEB Report, at 9.

evaluation to be based upon the past performance of both the prime contractor and its subcontractors. Additionally, WWC itself provided references that the agency concluded were relevant or somewhat relevant, which demonstrates that the substantial confidence rating was not based solely on the past performance references of WWC's subcontractors. In sum, we find no basis to object to the agency's evaluation of WWC's past performance.

Professional Compensation Evaluation

Obsidian next argues the agency failed to conduct a proper realism evaluation of WWC's professional compensation. Obsidian asserts that the agency's realism evaluation improperly compared the offerors' rates to Federal employee pay scale rates[5] and failed to consider an unrealistically low fringe benefit rate proposed by one of WWC's subcontractors. We find the agency's evaluation of WWC's professional compensation unobjectionable.

The purpose of FAR provision 52.222-46--Evaluation of Compensation for Professional Employees is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 8. In the context of a fixed-price labor hour contract, our Office has noted that this FAR provision anticipates an evaluation of whether an offeror understands the contract's requirements, and has offered a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding an offeror's proposed compensation. Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Id. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. MicroTechnologies, LLC, supra, at 7.

The solicitation required an offeror to submit a total employee compensation plan in accordance with FAR provision 52.222-46. RFP at 48. The RFP required that the plan set forth proposed salaries and fringe benefits for professional employees along with supporting data, such as recognized national and regional compensation surveys and studies of profession, public, and private organizations, used in establishing the total compensation structure. Id. Offerors also were required to submit total employee compensation plan (TECP) worksheets for themselves and major subcontractors to provide information on proposed annual base salaries, annual total paid time off (PTO),

[5] The general schedule (GS) is the pay scale used for United States civilian government employees.

and annual fringe benefit costs without paid time off.[6] See AR, Tab 9-11, WWC and Subcontractors TECP worksheets.

The solicitation provided that an offeror's total compensation plan would be evaluated consistent with FAR provision 52.222-46 to ensure that the plan demonstrates a sound management approach, an understanding of the contract requirements, the ability to provide uninterrupted high-quality work, the impact upon recruiting and retention of employees, and the realism of the salary and fringe benefits proposed. RFP at 56. The RFP provided that "[t]he Government may use government civilian rates, similar contract labor rates, other similar or relevant websites, or anything else it deems appropriate or beneficial in its evaluation of realism." Id.

The agency's evaluation of WWC's employee compensation plan analyzed the proposed annual base salaries, annual fringe benefit amounts, and the combined total compensation amounts. AR, Tab 14, SSEB Evaluation WWC, at 19-21. The SSEB compared the proposed compensation plan to GS-equivalent based salaries and corresponding fringe benefit amounts as a basis to conclude whether the proposed compensation was realistic.[7] Id. at 19. Based on this analysis, the agency concluded that 69 of the 70 full time positions proposed by WWC were realistic. Id. at 21. With respect to one position, [DELETED] position in [DELETED], the agency concluded that the proposed base salary and total compensation was unrealistically low. Id. at 20. The agency conducted further analysis of these rates by comparing the base salary and total compensation of other offerors and found that WWC's rates were lower than the average base salary and total compensation proposed by other offerors for this position. Id.

Finally, the agency also compared WWC's average annual base pay and total compensation amounts to the average GS equivalent rates and average offeror rates. Id. at 20-21. WWC's average annual base pay was [DELETED] percent lower than the average GS-equivalent and [DELETED] percent lower than the average base salary proposed by the offerors. Id. at 20. Similarly, WWC's total compensation was [DELETED] percent lower than the average GS-equivalent and [DELETED] percent lower than the average total compensation proposed by the offerors. Id. at 21. Based

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[6] Annual total PTO was defined as the costs of all paid time-off, including holidays, personal leave, sick time, and other categories of paid leave. AR, Tab 9-11, WWC TECP Worksheets. Annual fringe benefits without PTO was defined as the costs of fringe benefits, such as health insurance, dental insurance, life insurance, 401K match, social security, Medicare, etc. Id.

[7] Based on the agency's review of market data and in consultation with a Joint Collective Training subject matter expert, the SSEB established a 15 percent range for the purpose of assessing realism of the base salary and fringe rates. In this regard, any rate that was more than 15 percent lower than the GS-equivalent rate was determined unrealistic.

on these findings, the SSEB concluded that the total employee compensation plan proposed by WWC was realistic. Id. at 21. The SSEB provided that even though one out of the 70 full time positions was determined unrealistic, it did not render the compensation plan for the entire offeror unrealistic. Id.

Obsidian argues that the agency failed to compare WWC's rates to the incumbent's rates and unreasonably concluded that WWC's low rates were realistic based on GS-equivalent rates. Obsidian also asserts that the agency failed to specifically consider the low fringe rates proposed by one of WWC's subcontractors. We find the agency's evaluation reasonable.

Here, the record demonstrates that the agency conducted a thorough evaluation of the awardee's professional compensation plan to ensure that the plan reflected a sound management approach and understanding of the contract's requirements, the offeror's ability to provide uninterrupted high-quality work, and the realism of the proposed compensation in accordance with FAR provision 52.222-46. While our Office has stated that in a recompetition, FAR provision 52.222-46(b) requires an agency to conclude whether a proposal "envision[s] compensation levels lower than those of predecessor contractors" by comparing proposed compensation rates to those of the incumbent, see SURVICE Eng'g Co., LLC, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 6-7, we find the agency reasonably compared proposed compensation to GS-equivalent compensation rates because incumbent salary and fringe rates were not available.

The agency explains that the incumbent contract was awarded on a fixed-price basis and thus, the agency has access to only fully burdened rates, which did not provide a breakdown of salaries and fringe benefits for the purpose of a realism evaluation pursuant to FAR provision 52.222-46.[8] Contracting Officer's Statement (COS) at 20. Thus, the agency did not have information to conduct a meaningful comparison of the offerors' compensation to the compensation of the incumbent contractor and instead chose the GS-equivalent rates. Id. The agency explains that the GS-equivalent rates were chosen, after the agency conducted market research and consulted with an agency subject matter expert (SME), because the UEWTEP contract would be performed in multiple locations and the GS rates offer locality pay adjustments. COS at 19. In light of the unavailability of the incumbent's salary and fringe benefit information, we find no basis to conclude that the agency's evaluation unreasonable based upon the protester's allegation that the agency failed to compare WWC's compensation to incumbent rates. Target Media Mid Atlantic, Inc., B-412468.8, June 27, 2017, 2017 CPD ¶ 208 at 6 (where record indicates that the actual, incumbent personnel rates were not reasonably ascertainable to the agency, analysis based upon a reasonable benchmark is unobjectionable); see also MicroTechnologies, LLC,

[8] This FAR provision calls for an evaluation of each offeror's compensation plan, defined as "salaries and fringe benefits . . . . to assure that the plan reflects a sound management approach and understanding of the contract requirements." FAR § 52.222-46(a).

B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 8-14 (burdened labor rates did not permit meaningful consideration of the compensation to be paid to employees).

Next, we find that the agency's assessment of the realism of WWC's compensation was reasonable. The record shows that the agency identified areas of concern where certain of the awardee's proposed labor categories were below the GS-equivalent benchmarks. The record demonstrates that the agency's analysis also compared compensation rates among the offerors.[9] During discussions, the agency advised the offerors of the rates that it determined were unrealistic. With respect to WWC, the agency found that its final proposal provided realistic compensation for 69 of the 70 positions. With respect to the one position, the agency concluded that the compensation was unrealistic but also concluded that the awardee's compensation overall was realistic because the compensation for this one position did not render the entire compensation plan unrealistic. We find that the protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. See Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 8.

Finally, we find reasonable the agency's evaluation of WWC's subcontractor's fringe rates. While Obsidian argues that the agency's evaluation failed to separately consider the realism of the awardee's subcontractor's proposed fringe rates, our Office has previously found that nothing in FAR provision 52.222-46 requires the agency to find that both an offeror's proposed fringe benefits and salary are, independently, realistic. MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 8. Instead, the provision requires agencies to assess whether an offeror's proposed "total compensation" is realistic. FAR § 52.222-46(a). As demonstrated above, the agency thoroughly considered WWC's total compensation and thus, we find no basis to conclude that the Air Force's evaluation was unreasonable.

In sum, we find no basis to question the agency's conclusion that WWC's proposed compensation plan reflects a clear understanding of the work to be performed; demonstrates the ability to retain qualified personnel and employ a stable workforce; and includes realistic rates for professional compensation overall.

Best-Value Decision

Obsidian first argues that USSOCOM's best-value tradeoff decision was flawed because it was based on evaluations that, according to the protester's arguments

[9] The agency found that the annual base salaries paid by Obsidian were only [DELETED] percent higher than WWC. COS at 18. Nonetheless, the total evaluated price difference between the two offerors was 24.8 million. A contributing factor for the difference in total evaluated price was Obsidian's higher markup (the difference between the total compensation and fully burden rates) of [DELETED] percent versus [DELETED] percent markup for WWC. AR, Tab 18, SSD, at 7. This fact was noted specifically by the SSA. Id.

above, were unreasonable. As described above, since the record does not support Obsidian's challenges to the agency's evaluation, we find no merit to Obsidian's objection to the agency's selection decision based upon alleged errors in the underlying evaluation of the proposals.

Obsidian also challenges the agency's tradeoff decision alleging that the agency did not justify the selection of WWC. Generally, in a negotiated procurement, an agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. A protester's disagreement, without more, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4. As explained in detail above, the record here shows that the SSA conducted an integrated assessment of the proposals and concluded that the additional benefits offered by Obsidian do not justify the significant increase in price when compared to WWC, which also exceeded the requirements. AR, Tab 18, SSD, at 8. We find no basis to question the agency's reasoned judgments.

Change in Requirements

Finally, Obsidian argues that the agency improperly modified the contract post-award to account for the awardee's low compensation rates. After receiving the agency report, which demonstrated that the scope of work and fixed-price labor rates were not altered, the protester modified its argument to allege that the agency awarded a contract for an amount ($200 million) that was not the same as WWC's total evaluated price ($161,763,848) provided in Obsidian's unsuccessful offeror notice. The protester also alleges that the contract line item number price for WWC's labor was improperly increased as well.

In response, the agency explains that the contract is a fixed-price labor hour contract. Thus, while the solicitation provided estimated hours for the purposes of evaluation, the labor hours are not fixed. In this regard, the RFP notified offerors that the agency may issue task orders for discretionary labor hours during performance of the contract and that the labor hours provided in the worksheets were given as estimates for the purposes of evaluation. RFP at 59. The agency asserts that it used a $200 million not-to-exceed amount instead of WWC's total evaluated price of $161,763,848 because the not-to-exceed amount demonstrates the total possible (ceiling) value of the contract, while the total evaluated price demonstrates only the price at which WWC's proposal was evaluated based on estimates of labor hours.[10] The agency explains that the

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[10] The agency states that the contracting officer decided at the time of award to reduce the contract ceiling ($375 million) provided in the RFP to $200 million. COS at 25 n.1.

(continued...)

$200 million includes the guaranteed core hours and possible, but not guaranteed discretionary task order hours. COS at 24. Thus, the agency argues that protester's allegations are factually incorrect because there has been no change to the contract--the scope of work and fixed-price labor rates have not been modified and per the terms of the solicitation, the agency has discretion (up to the not-to-exceed amount) to order as many labor hours as necessary.[11]

We agree with the agency. WWC is bound by its fixed-price labor hour rates, and the solicitation permits the agency discretion to order hours up to the not-to-exceed value of the IDIQ contract.[12] Accordingly we find no basis to conclude that the contract has been materially altered as alleged by Obsidian.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)
Obsidian does not challenge this change, and in any event, this is a matter of contract administration, which we will not consider. 4 C.F.R. § 21.5(a).

[11] To the extent the protester challenges the agency's discretion to order more hours than estimated in the solicitation, this is an untimely challenge to the terms of the solicitation, which clearly provided for discretionary labor-hour task orders. 4 C.F.R. § 21.2(a)(1).

[12] The same is true for the change in value of WWC's labor contract line item from [DELETED], to the amount identified in the price worksheet, $173,812,447. Again, this change simply reflects the agency's discretionary task orders and the not-to-exceed amount of labor that could be awarded under the $200 million overall not-to-exceed amount. WWC's fixed-price labor rates have not been altered.