

Decision

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Matter of: A-P-T Research, Inc.

File: B-419459

Date: March 12, 2021

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DIGEST

1. Protest challenging evaluation of protester's proposal as unacceptable under a technical subfactor for failing to provide a bilateral employment agreement for its proposed program manager is denied where the record reflects that, even had the protester received an acceptable rating under the subfactor, the protester's proposal would not have been selected for award, and therefore, the protester cannot demonstrate competitive prejudice.

2. Protest challenging the agency's evaluation of technical proposals is denied where the record reflects that the agency reasonably evaluated the proposals in accordance with the terms of the solicitation.

3. Protest challenging agency's cost realism analysis and evaluation of professional employee compensation plans is denied where the record demonstrates that the evaluation was reasonable and consistent with the terms of the solicitation and the requirements of Federal Acquisition Regulation provision 52.222-46.

DECISION

A-P-T Research, Inc., a small business of Huntsville, Alabama, protests the award of a contract to ARES Technical Services Corporation, of Burlingame, California, also a small business, under request for proposals (RFP) No. HQ0858-20-R-0003, issued by the Department of Defense, Missile Defense Agency (MDA), for technical, engineering, advisory and management support (TEAMS) safety support services. APT challenges

MDA's evaluation of the technical and cost proposals and contends that the best-value tradeoff and source selection decision was unreasonable.

We deny the protest.

BACKGROUND

MDA issued the RFP, as a small business set-aside, on June 1, 2020. Agency Report (AR), Tab 3-1, RFP at 1. The solicitation anticipated award of a cost-plus-fixed-fee, level of effort contract for a base period of performance of three years with two 1-year option periods. *Id.* at 3; Contracting Officer Statement (COS) at 1.

The solicitation provided for award on a best-value tradeoff basis, considering two factors: mission capability and cost. RFP, Tab 3-4, RFP, Section M at 4. The mission capability factor was considered significantly more important than cost. *Id.* The solicitation also provided for the evaluation of the following two factors on a pass/fail basis: information management and control plan (IMCP), and organizational conflict of interest (OCI) management plan.¹ *Id.* The mission capability factor included six subfactors, of equal importance: safety risk acceptance package development and coordination; safety requirements tailoring process support; program safety documentation review; test event safety oversight; occupational safety & health program; and human capital management. Each subfactor also included sub-elements. Relevant to this protest, the following sub-elements were identified under the human capital management subfactor: recruit qualified personnel, retain qualified personnel, problem resolution strategy, and a key staff position defined as the contract program manager (CPM). AR, Tab 3-4, RFP, Section M at 10-11.

The solicitation required the agency to evaluate cost for reasonableness, cost realism, and compliance with the evaluation of professional compensation provisions of Federal Acquisition Regulation (FAR) 52.222-46, which was incorporated into the solicitation. RFP at 12-13. The solicitation provided the "Government will analyze direct labor rates for realism and to ensure compliance with FAR 52.222-46." AR, Tab 3-3, RFP, Section L at 22. The solicitation included "benchmark" direct labor rates ("Benchmarks") based in part on data from the Economic Research Institute ("ERI") Salary Assessor. *Id.* at 22-23. The solicitation forewarned offerors that proposing average direct labor rates less than the benchmarks would result in an upward cost adjustment.

The solicitation also required offerors to submit a total compensation plan for evaluation in accordance with FAR provision 52.222-46. AR, Tab 3-3, RFP Section L, at 28. The solicitation established minimum "baseline expectations" for offerors' fringe benefits. *Id.* at 28. If an offeror proposed less than the baseline expectations, it was required to

¹ The RFP provided that any proposal rated unacceptable under either the IMCP or OCI management plan factor would be ineligible for award.

explain how proposed alternate compensation methods will enable the recruiting and retention of qualified workers.

MDA received timely proposals from three offerors, including APT² and ARES. COS at 1. The final evaluation ratings and evaluated costs of APT's and ARES's proposals were as follows:

	APT	ARES
Mission Capability		
Safety Risk Acceptance Package Development & Coordination	Good	Good
Safety Requirements Tailoring Process Support	Acceptable	Good
Program Safety Documentation Review	Good	Acceptable
Test Event Safety Oversight	Good	Acceptable
Occupational Safety & Health Program	Acceptable	Acceptable
Human Capital Management	Unacceptable	Acceptable
IMCP Plan	Acceptable	Acceptable
OCI Management Plan	Acceptable	Acceptable
Total Evaluated Cost	\$65,094,711	\$54,941,108

AR, Tab 6-3, Source Selection Decision Document (SSDD), at 2.

Although APT's proposal was rated unacceptable under the human capital management subfactor, it was included in the agency's best-value tradeoff analysis. AR, Tab 6-1, Proposal Analysis Report (PAR), at 107-116. In performing the best-value tradeoff analysis, MDA conducted a detailed comparison of APT's and ARES's proposals, considering the substance and nature of the strengths assessed to both proposals under each subfactor and sub-element. *Id.* The source selection authority (SSA) concluded that, "between ARES[']s and APT's proposals, even if APT's proposal had not been rated Red/Unacceptable for [the human capital management subfactor], ARES[']s proposal would still be deemed the better value because the strengths associated with APT's proposal would not be worth an 18% (\$10,153,603) premium." AR, Tab 6-3, SSDD, at 3. The SSA selected ARES's proposal as the overall best value for the government and awarded the contract to that firm. *Id.*

On November 17, 2020, the agency notified APT that its proposal had not been selected for award. AR, Tab 7-1, APT Notice at 1. APT then timely filed this protest with our Office.

² APT performed as the incumbent contractor for the requirement at issue. MOL at 6.

DISCUSSION

APT argues that the agency failed to credit its proposal with various strengths. APT also contends that MDA unreasonably evaluated its proposal as unacceptable under the human capital management subfactor for failing to provide a bilaterally-signed employment agreement for its proposed program manager. The protester asserts that the evaluation was flawed because it was based on an unreasonable interpretation of the RFP's requirements. As for the awardee, the protester maintains that MDA failed to conduct a proper cost realism analysis and evaluation of ARES's professional employee compensation plan. The protester also argues that, in light of the evaluation errors, the best-value tradeoff and source selection was improper. For the reasons discussed below, we find no basis to sustain the protest.³

Technical Evaluation

APT challenges the technical evaluation, arguing the agency unreasonably failed to identify numerous strengths associated with APT's proposal under several of the mission capability subfactors. As discussed below, we find the protester's arguments to be without merit.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. *Strategic Resources, Inc.*, B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4.

Retaining Qualified Personnel Subfactor

APT alleges that the agency failed to assess a strength to its proposal under the "retaining qualified personnel" sub-element of the human capital subfactor.⁴ As noted

³ Although we do not address all of the protester's arguments in this decision, we have considered all of them, and find no basis to sustain the protest.

⁴ In the initial protest, APT also argued its proposal warranted a strength under the "recruiting qualified personnel" sub-element of the human capital subfactor, which required offerors to demonstrate a process for timely recruiting and onboarding personnel that meet the qualifications in the statement of work (SOW). AR, Tab 3-3, RFP, Section L at 20. APT initially argued generally that its proposal should have received a strength under the recruiting personnel sub-element because its proposed compensation plan exceeded the RFP's minimum requirements. Protest at 10. In the agency report, MDA provided a substantive response to the protester's assertions. In

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above, the solicitation provided that the agency would evaluate an offeror's human capital management capability based on the offeror's approach to, and understanding of, six sub-elements, including the "retaining qualified personnel" sub-element. Under this sub-element, the solicitation provided that, in evaluating capability to retain qualified personnel, the agency would consider the offeror's approach and understanding to retain experienced personnel within its company, in concert with the compensation plan portion of the offeror's cost volume. AR, Tab 3-4, RFP, Section M at 10. As discussed previously, the solicitation required offerors to submit a total compensation plan for evaluation, and established minimum baseline expectations for offerors' fringe benefits.⁵ AR, Tab 3-3, RFP, Section L at 28. If an offeror proposed less than the baseline expectations, it was required to explain how proposed alternate compensation methods would enable the recruiting and retention of qualified workers. *Id.*

The technical evaluators found that APT proposed "fair and proper compensation as part of [its] retention plan for the workforce." AR, Tab 6-1, PAR at 26. The evaluators noted that APT's proposal included a completed table in accordance with RFP section L.10.7, which proposed "compensation equal to or greater than the Government baseline minimum." *Id.* The evaluators also found that APT provides a "development strategy that details Compensation Package, Advancement, Training, Variety, Job Security, Loyalty, Meaningful Work, and Ownership." *Id.* The evaluators noted that, in general, "the philosophy behind the APT compensation plan is ' . . . to provide wages that are near the local median and add to that benefits that are well above the median.'" *Id.* The evaluators also noted that APT's proposal stated that "[m]any of [their] current

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its comments responding to the agency report, the protester raises for the first time, specific allegations regarding the agency's evaluation of this sub-element. AR, Tab 7-3, APT Debriefing at 31-32; Comments at 8 (asserting its proposal "provide[d] institutional knowledge and seamless continuity of effort" and described a "detailed process for identifying, recruiting, and onboarding new personnel," but that the agency failed to recognize these as a discriminator in the evaluation).

This argument is untimely. The agency apprised APT of this information at the firm's debriefing. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. 4 C.F.R. § 21.2(a)(2); *CapRock Gov't Solutions, Inc. et al.*, B-402490 *et al.*, May 11, 2010, 2010 CPD ¶ 124 at 24. Here, because APT could have, but did not raise the new arguments regarding the agency's evaluation in its initial protest filing, they are untimely and therefore dismissed.

⁵ For example, the baseline minimum benefits included: employee health insurance (subsidized 70% or more), family health insurance (subsidized), 80 hours minimum vacation, 10 day minimum holidays, and 401(K) matching (100 percent match on first 3 percent or 50 percent match on first 6 percent). AR, Tab 3-3, RFP, Section L at 28.

workforce joined APT from other companies without a wage increase because of [their] benefits.” *Id.* The evaluators found that APT's compensation plan “details what would traditionally be thought of as benefits provided by an employer (retirement plans, leave policies, insurance, incentives, etc.)” and further “lists benefits and opportunities provided by APT in the APT retention strategy.” *Id.* Ultimately, the evaluators concluded that “APT met the requirement because the proposal demonstrates a sufficient approach and understanding to retain experienced personnel within their company while providing fair and proper compensation [in accordance with] Section L 10.7.” *Id.*

APT asserts that its proposed compensation “greatly exceeded” the minimum required by the solicitation, and therefore contends that its proposal should have received a strength for exceeding the agency’s requirement for this sub-element. For example, the protester maintains that APT provides “greater than required health insurance subsidies,” “superior retirement benefits,” and “very competitive base salaries.” Protest at 10. The agency responds that the evaluators reasonably evaluated APT’s proposal and concluded that the benefits and features raised in the protest met the requirements, but did not warrant strengths. We find no basis to sustain the protest.

An agency’s judgment that the features identified in the protest did not significantly exceed the requirements of the RFP, and thus did not warrant the assessment of unique strengths, is a matter within the agency’s discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4; *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 13.

We find no basis to question the reasonableness of the agency’s evaluation. The record reflects that MDA conducted a thorough assessment of APT’s proposed compensation and benefits, including acknowledging that APT’s proposed compensation exceeded the RFP’s minimum requirements. AR, Tab 6-1, PAR at 26-27. The evaluators concluded that APT’s compensation plan demonstrated what would traditionally be thought of as benefits provided by an employer, such as retirement plans, leave policies, insurance, and other incentives, and also listed benefits and opportunities provided by APT in a retention strategy. *Id.* The evaluators found that APT met the sub-element requirement because its proposal demonstrated a sufficient approach and understanding to “retain experienced personnel” within its company while providing fair and proper compensation. *Id.*

Although the protester argues that its proposed benefits “far exceeded” the RFP’s minimum baseline requirements, the protester has not demonstrated that the aspects discussed provide an additional benefit to the agency or otherwise independently met the RFP’s standard for a strength, *i.e.*, an aspect that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the government during contract performance. AR, Tab 3-4, RFP, Section M at 7. The protester’s disagreement with the evaluation, without more, is insufficient to establish

that the evaluation was unreasonable or otherwise improper. *Strategic Resources, Inc., supra.*

Other Mission Capability Subfactors

The protester next argues that the agency failed to recognize numerous additional strengths in its proposal under the other five mission capability subfactors in light of APT's "extensive experience" with MDA performing the incumbent and predecessor contracts. Comments at 9. As relevant here, the RFP provided that the agency would evaluate an offeror's "requisite experience to accomplish the mission tasks." AR, Tab 3-4, RFP, Section M at 9-10. MDA argues that the evaluators reasonably considered APT's experience as it related to each mission capability subfactor in accordance with the RFP, and when deemed appropriate, assessed a strength.

We find nothing unreasonable regarding the agency's evaluation. The record shows that the evaluators considered APT's experience in evaluating each mission capability subfactor. AR, Tab 6-1, PAR at 15-24. Ultimately, the evaluators assessed four strengths based on APT's experience. *See, e.g., id.* at 15 (assigning strength under safety risk subfactor for the "breadth and depth" of APT's proposed "nationally recognized expertise," and finding that the government would receive "real-time hazard mitigations, coordination, and corrective actions without having to schedule and wait for independent studies, trial and error, or other delays to identify solutions and obtain approval"); *id.* at 20-21 (assigning two strengths under the program safety documentation review subfactor for APT's experience with "the complete safety assessment process" and "proven document review techniques and checklists"); and *id.* at 23 (assigning a strength under the test event safety oversight subfactor for "APTs capability and experience (personnel who average above 20 years of test support experience) with Range Safety operations during hazardous operations and ground safety reduces schedule and costs").

The record further reflects that the evaluators also noted numerous instances where they found that APT's experience demonstrated that APT's proposal met the requirement. *See, e.g.,* AR, Tab 6-1, PAR at 17 (finding that APT's proposal met the requirement under the safety risk acceptance package development subfactor because "APT has experience preparing professional quality safety risk assessments for coordination and approval from the appropriate risk acceptance authority and other key stakeholders"); *id.* at 18 (determining that APT's proposal met the requirement, under the first sub-element of the safety requirements subfactor, because APT's "proposal demonstrates a sufficient approach, understanding, and requisite experience in . . . the impacts of the tailored requirement on the system safety[.]"); *id.* (finding that APT's proposal met the requirement under the second sub-element of the safety requirements subfactor because "APT understands through their experience, the change process from identifying a need for an engineering change (initial phase)" to "verification that the change is working and safety is unchanged (verification final phase)"); *id.* at 21 (finding that APT's proposal met the requirement under the program safety documentation review subfactor because it provided "evidence of their understanding through their described experience in safety documentation development and processing," which the

evaluators determined,” will “ensure that the documentation is ready when SSRA [system safety risk assessments] packages are going forward for approval.”). On this record we find no basis to question to the agency’s evaluation. As set forth above, our Office does not reevaluate proposals and will not substitute our judgment for that of the agency. *Computer World Servs. Corp., supra*. To the extent the protester asserts that its proposal merited additional strengths, the protester’s disagreement with the agency’s judgment, without more, does not provide a basis to sustain the protest. Accordingly, this aspect of the protest is denied.

Requirement for Bilaterally-Signed Employment Agreement

APT also challenges the rating of its proposal as unacceptable under the human capital management subfactor for failing to provide a bilaterally-signed employment agreement from its proposed candidate for the CPM position. The protester contends that the RFP’s requirement for a bilaterally-signed employment agreement applied only to proposed candidates who were prospective or contingent employees of the offeror. In the protester’s view, because its proposed candidate for the CPM position was an existing employee of APT, the solicitation’s requirement for a bilaterally-signed employment agreement was inapplicable to this individual.

In a negotiated procurement, such as the one here, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *ARBEIT, LLC*, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. In this regard, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Applied Visual Tech., Inc.*, B-401804.3, Aug. 21, 2015, 2015 CPD ¶ 261 at 3.

Under the human capital management subfactor, offerors were required to address a number of sub-elements, including the offeror’s proposed CPM, which was designated a “key staff position.” As relevant here, offerors were required to provide a resume for the CPM “that meets all the qualifications at time of proposal submission.” AR, Tab 3-3, RFP Section L at 18. This section also provided that “[o]fferor[s] shall provide a bilaterally-signed employment agreement (employment contingent on contract award) for the key staff position,” and specified that the “bilaterally-signed employment agreement must stipulate employment beginning on or before the first day of contract period of performance for this effort.” *Id.*

Section M of the RFP provided that the agency would evaluate the CPM’s resume to ensure it: meets all the qualifications at time of proposal submission, includes a current top secret security clearance, and “includes a bilaterally-signed employment agreement that stipulates employment beginning on or before the first day of contract period of performance for this effort.” AR, Tab 3-4, RFP, Section M at 11.

APT’s proposed CPM is the same individual who is currently performing that role for the incumbent effort. Protest at 8. APT’s proposal included a resume for its proposed CPM, which provided in relevant part, that he was employed by “A-P-T Research, Inc.”

and was currently the “Vice President and Director of the APT Department of Defense Programs, System Safety and Test Division.” AR, Tab 4-1, APT Tech. Proposal at 67. APT’s proposal, however, did not provide a bilaterally-signed employment agreement for its proposed CPM. *Id.*

In evaluating APT’s proposal, the agency assessed a deficiency because APT’s proposal “failed to provide the bilaterally-signed employment agreement.” AR, Tab 6-1, PAR at 28. The evaluators explained that “this is a material failure of the proposal” in “accordance with Section M 4.6 and Section L 7.7” because it is “required that the proposal provide a bilaterally-signed employment agreement (employment contingent on contract award) for the key staff position.” *Id.* The evaluators found that “[t]his failure increases the risk of unsuccessful contract performance because a lack of a Contract Program Manager at the start of contract performance would serve to delay critical functions such as on-boarding of new personnel, any meetings to establish base expectations and ground rules for performance over the course of the contract, and it may serve to decrease the performance of the contractor if nobody with similar experience and qualifications can be found over a short timeframe.” *Id.* Based on this deficiency, the agency determined that APT’s proposal was “unacceptable” under the human capital management subfactor. *Id.*

The protester argues that the agency’s evaluation was flawed because it was based on an unreasonable interpretation of the RFP’s requirements. While MDA construed the RFP as requiring all offerors to provide a bilaterally-signed employment agreement for their proposed CPM for the key staff position, the protester contends that this requirement applied only to offerors that proposed a CPM whose employment with the offeror was prospective or contingent. The protester argues that, because its proposed candidate for the CPM position was an existing employee of APT, APT’s proposal needed only to demonstrate the proposed CPM’s status as a current employee to satisfy the requirement. The protester maintains that APT’s proposal, in fact, sufficiently demonstrated the status of APT’s proposed CPM as a current employee, and in this regard, adequately met the RFP requirement. The protester therefore contends that the agency’s evaluation of a deficiency for its failure to provide an employment agreement was unreasonable.

MDA disagrees with the protester’s interpretation of the RFP. The agency also points out that despite the unacceptable rating, APT’s proposal was still included in the agency’s best-value tradeoff analysis, and the SSA contemporaneously determined that, even if APT’s proposal had not been considered unacceptable for this sub-element, its proposal would not have been selected for award because the benefits of its approach were not worth the cost premium. AR, Tab 6-3, SSDD at 3; Memorandum of Law (MOL) at 39, n.6. The agency therefore argues that, even assuming its evaluation of the deficiency was improper, the protester cannot demonstrate competitive prejudice.

Competitive prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions; that is, unless the protester demonstrates that, but

for the agency's actions, it would have a substantial chance of receiving an award. *Octo Consulting Grp., Inc.*, B-413116.53, B-413116.55, May 9, 2017, 2017 CPD ¶ 139 at 10.

We agree with the agency that even assuming it erred in finding APT's proposal unacceptable under the human capital management subfactor, the protester has failed to demonstrate that it was competitively prejudiced. The record reflects that, in performing the best-value tradeoff analysis, MDA conducted a detailed comparison of APT's and ARES's proposals, considering each subfactor and sub-element. AR, Tab 6-1, PAR at 107-116. Additionally, the agency reviewed and considered the substance and nature of the strengths assessed to both proposals. *Id.* The agency found discriminators in favor of APT under two of the six non-cost subfactors: program safety documentation review, and test event safety oversight. *Id.* at 111, 113. The agency found one discriminator in favor of ARES under the safety requirements tailoring process support subfactor. *Id.* at 110. The agency did not find any discriminators between the two proposals under either the safety risk acceptance package and development subfactor or the occupational safety and health program subfactor. *Id.* at 108, 113-114. With regard to the human capital management subfactor, the only discriminator between the proposals was the deficiency based on APT's failure to provide a bilateral employment agreement for APT's proposed CPM, which resulted in an unacceptable rating for APT's proposal. *Id.* at 114. The record reflects that the SSA contemporaneously concluded that "even if APT's proposal had not been rated Red/Unacceptable for [the human capital subfactor], ARES'[s] proposal would still be deemed the better value because the strengths associated with APT's proposal would not be worth an 18% (\$10,153,603) premium." AR, Tab 6-3, SSDD at 3.

Because the record shows that the protester would not have had a substantial chance of award even if its proposal had not been rated as unacceptable under the human capital management subfactor, we find that it suffered no prejudice as a result of any error in the evaluation regarding the submission of the bilateral employment agreement under that subfactor. On this record, we conclude that the agency's technical evaluation was reasonable. Accordingly, this protest ground is denied.

Cost Realism Analysis & Evaluation of Compensation for Professional Employees

The protester challenges the agency's cost realism evaluation and argues that the agency improperly failed to analyze the awardee's proposed professional employee compensation in accordance with FAR provision 52.222-46. APT asserts that the awardee's technical approach involved "incumbent capture" but that the agency did not reasonably analyze whether it was realistic for ARES to capture APT's incumbent workforce. The agency argues it properly evaluated the cost proposals and professional employee compensation as required by the RFP and the FAR.

When an agency evaluates proposals for the award of a cost-reimbursement contract, it must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR 15.305(a)(1), 15.404-1(d); *Nat'l Gov't Servs., Inc.*, B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 8.

Nonetheless, an agency's realism analysis need not achieve scientific certainty; rather, the analysis must provide a reasonable measure of confidence that the costs proposed are realistic based on information reasonably available to the agency at the time of its evaluation. *SGT, Inc.*, B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. For example, a derived estimate of unburdened labor rates may constitute an appropriate standard against which realism may be assessed. *Science Applications Int'l Corp.*, B-290971 *et al.*, Oct. 16, 2002, 2002 CPD ¶ 184 at 17. Similarly, an agency is not required to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. *Tyonek Global Servs., LLC; Depot Aviation Sols., LLC*, B-417188.2 *et al.*, Oct. 4, 2019, 2019 CPD ¶ 354 at 19. Consistent with the above, GAO's review of an agency's cost realism evaluation is limited to determining whether the agency's analysis is reasonably based and not arbitrary. *AdvanceMed Corp.; TrustSolutions, LLC*, B-404910.4 *et al.*, Jan. 17, 2012, 2012 CPD ¶ 25 at 13.

The RFP included FAR provision 52.222-46, Evaluation of Compensation for Professional Employees, and provided that the agency would "analyze direct labor rates for realism and to ensure compliance with FAR 52.222-46." AR, Tab 3-3, RFP, Section L at 22. The solicitation explained that the "realism of direct labor cost is fundamental to a successful professional services acquisition," and therefore, "[t]o provide transparency into this evaluation," the agency is providing "benchmark direct labor rates" for each RFP labor category in a Labor Category Worksheet, which was included as an attachment to the RFP. *Id.* The RFP further explained that MDA developed the salary benchmarks based on two sources of direct labor data: information provided by the incumbent contractors, and labor market data from the ERI Salary Assessor. *Id.* at 22-23.

The RFP notified offerors that "[t]hese benchmarks are the [g]overnment's estimate of the minimum realistic average hourly direct labor rate considered adequate to recruit and retain the current workforce." *Id.* at 22. The solicitation further advised that "[o]fferors proposing average direct labor rates less than these benchmarks will receive an unfavorable assessment in the form of cost realism adjustments to the proposed direct labor rates up to the benchmarks," and that "[t]his adjustment will be reflected in the [o]fferor's total evaluated price." *Id.*

The cost evaluation team (CPET) found that ARES's total compensation plan complied with FAR provision 52.222-46, stating that ARES "has the ability to provide uninterrupted high-quality work in accordance with FAR Clause 52.222-46." AR, Tab 6-2, Cost Evaluation Report (CER) at 10; Tab 6-3, SSDD at 3. The CPET found that ARES's proposed labor hours complied with the level of effort required by the RFP. AR, Tab 6-2, CER at 10. As required by the solicitation, the CPET compared ARES's proposed direct labor rates to the benchmark direct labor rates included in the RFP. *Id.* The CPET found that ARES's proposed direct labor rates were realistic because the rates were equal to or higher than the RFP benchmarks. *Id.* at 11; Tab 6-3, SSDD at 3. The CPET also calculated ARES's proposed escalation rate, which it found was 2 percent. The CPET determined ARES's escalation rate was realistic because it was equal to the RFP's 2 percent requirement. *Id.*

Regarding ARES's proposed benefits, "[t]he CPET compared the proposed benefits to the benefit expectations included in the RFP." *Id.* The CPET found that ARES's proposed benefits were "equal to or higher than the RFP Baseline Minimum benefit expectations" and therefore determined that they were realistic. *Id.* The CPET also evaluated ARES's indirect rates. The CPET explained that "ARES included an Indirect Rate Build-up table showing the rate history and projections for each of the proposed indirect rates." *Id.* at 13. Based on this table, the CPET concluded that ARES's "proposed indirect rates appear to be consistent with its rate history and are determined to be realistic." *Id.*

With regard to ARES's approach to recruiting and on-boarding personnel, the evaluators noted that ARES proposed a "three-step process," and stated the following:

ARES proposed a process to ensure that the personnel required to fulfill program requirements are recruited and hired in a timely manner. The three step process that they outline . . . starts with the approach to capture incumbent personnel; second, if unable to capture incumbents, we have a back-up candidate pool of qualified candidates that have been vetted to ensure they meet [labor competencies] LCs; and third, we actively add to our candidate pool with qualified available personnel that have been sourced and meet the qualifications.

AR, Tab 6-1, PAR at 56; Tab 5-1, ARES Tech. Proposal at 6-3. MDA found that ARES's "cost/price proposal didn't include any notable qualitative cost issues nor does its proposal require any additional [g]overnment costs to support the proposed approach." AR, Tab 6-2, CER at 14. Ultimately, the CPET concluded that "[b]ased on this cost/price analysis ARES' Total Evaluated Price is reasonable and realistic to accomplish the requirement." *Id.* at 14-15; Tab 6-3, SSDD at 3.

The protester does not dispute that the RFP provided minimum benchmark direct labor rates and baseline expectations for fringe benefits. Protest at 6; Comments at 4. Nor does the protester dispute that all of ARES's proposed direct labor rates met or exceeded the RFP's minimum benchmarks, or that all of ARES's proposed benefits met or exceeded the RFP's baseline expectations for fringe benefits. Comments at 4. Rather, in the protester's view, "[n]either the [b]enchmarks, nor the [b]aseline [e]xpectations [in the RFP] were in line with APT's actual historic costs of performance." *Id.* The protester therefore argues that the agency's evaluation was unreasonable because the agency did not compare ARES's direct labor rates and proposed benefits to "APT's actual historical costs."⁶ *Id.* The protester also asserts that the awardee's technical approach involved "incumbent capture" but that the agency did not reasonably analyze whether it was realistic to expect that ARES would capture APT's incumbent workforce.

⁶ The protester explains in its comments that "APT's proposed costs are consistent with its historic costs." Comments at 4, n.6; Protest, attach. 4, Decl. of APT Chief Financial Officer, Dec. 5, 2020, at 2.

The purpose of FAR provision 52.222-46 is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. *Obsidian Sols. Grp., LLC*, B-416343, B-416343.3, Aug. 8, 2018, 2018 CPD ¶ 274 at 7. The provision requires that the agency evaluate an offeror's total compensation plan (salaries and fringe benefits) by considering its impact on recruiting and retention, its realism, and its consistency with a total plan for compensation. FAR 52.222-46(a). The provision cautions that "lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement." FAR 52.222-46(b).

On this record, we find that MDA's evaluation was reasonable. The solicitation provided the appropriate level of effort and associated skill mix, to include detailed labor competencies. AR, Tab 3-3, Section L at 21. Additionally, as noted above, the RFP identified benchmark salary data, and disclosed that "[t]hese benchmarks are the [g]overnment's estimate of the minimum realistic average hourly direct labor rate considered adequate to recruit and retain the *current* workforce." *Id.* at 22 (emphasis added). The solicitation further advised that the government developed the benchmarks based on two sources of direct labor data: information provided by the incumbent contractors (*i.e.*, APT), and labor market data from the ERI salary assessor. *Id.* at 22-23. The record reflects that the agency evaluated both offerors' unburdened labor rates and fringe benefits in the same manner. The record shows that in evaluating labor rates, the agency reasonably compared the proposed rates to the benchmark direct labor rates, as specified in the RFP. The agency based its evaluation of proposed benefits on a comparison to the RFP's baseline expectations for fringe benefits. The agency's evaluation in this regard was consistent with the terms of the solicitation.

Although the protester asserts that the evaluation of ARES's proposed costs was unreasonable because the agency failed to compare the awardee's proposed costs to the incumbent's historical costs, the solicitation explained that the government's estimate for the direct labor benchmark data was based, in part, on the incumbent's historical costs. *Id.* at 22-23 ("The Government developed these benchmarks based on . . . [i]nformation provided by the incumbent TEAMS contractors[.]"). To the extent APT disputes that the incumbent's historical costs were considered in creating the government's estimate of the benchmark direct labor rates, or disagrees that the benchmark direct labor rates reflected the "minimum realistic average hourly direct labor rate[s]" that were "adequate to recruit and retain the current workforce," the protester's arguments constitute an untimely challenge to the terms of the solicitation. See 4 C.F.R. § 21.2(a)(1). Based on our review, the agency performed a detailed and reasonable evaluation of the offerors' employee compensation plans. To the extent the protester asserts that the agency's cost realism evaluation was unreasonable, the protester's disagreement with the agency's judgment, without more, does not provide a

basis to sustain the protest. See *TriCenturion, Inc.; SafeGuard Servs., LLC*, B-406032 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 6. Based on this record, we find no basis to sustain the protest.

The protest is denied.

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General Counsel