

FOR PROFESSIONAL EMPLOYEE COMPENSATION, GOVERNMENT WIDE AVERAGE RATES ARE NOT ADEQUATE FOR REQUIRED RISK ASSESSMENT

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The Federal Acquisition Regulation (“FAR”) requires a special consideration of labor rates proposed by offerors for their professional employees. FAR 52.222-46 of the FAR notes that recompetition of services contracts may result in lowering compensation for professional employees, which may be detrimental for contract performance. Therefore, professional employee compensation must be evaluated for specific risk assessment noted in that FAR Clause.

The Air Force awarded an indefinite delivery, indefinite quantity contract to General Dynamics One Source (“GD”) for security support services for classified programs throughout the world. ManTech, the incumbent contractor, challenged GD’s proposed labor rates for professionals. The contract was a cost-type contract for 10 years, with a ceiling value of \$4.45 billion.

FAR 52.222-546, Evaluation of Compensation for Professional Employees, states:

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

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in

reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(Emphasis added)

GAO noted that in this case, GD's technical approach was based on retaining a substantial portion of ManTech's incumbent professional personnel, and the issue was whether the offeror's approach would be sufficient to retain the incumbents. In addition GAO noted that where a solicitation includes FAR 52.222-46, the agency must compare current employee compensation rates and the proposed compensation rates to ensure program continuity.

Finally, GAO concluded that the agency risk assessments were based on a comparison of GD proposed professional compensation rates to "government average professional compensation rates." Although the agency viewed these rates as realistic, they were lower than the incumbents'. Accordingly, GAO disagreed with the agency that GD's proposal reflected low technical risk and complied with FAR 52.222-46. The GAO sustained the protest because of the failure to compare awardee's professional salaries to incumbent professional salaries, a necessary step in a FAR 52.222-46 analysis.

Takeaway: FAR 52.222-46, when included in a solicitation requires a risk assessment that includes a reasonable comparison of awardee salaries to incumbent salaries. Government-wide averages are insufficient.

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