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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Castro & Company, LLC

File: B-412398

Date: January 29, 2016

Thomas Castro and Gabriel Fry, Castro & Company, LLC, for the protester. Steven F. Pereira, Esq., Department of Transportation, for the agency. Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency miscalculated protester's quotation with respect to technical and past performance factors is sustained where the evaluation results are not supported by the record.
 2. Protest that source selection decision lacked a reasonable basis is sustained where contemporaneous record shows that contracting officer selected awardee's quotation on the basis of its higher numerical score, without documenting any consideration of the basis for the score, the merits of competing quotations, or whether any advantages of the awardee's quotation outweighed its higher price.
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DECISION

Castro & Company, LLC (C&C), of Alexandria, Virginia, a small business, protests the issuance of a Federal Supply Schedule (FSS) order to AOC Solutions, Inc., of Chantilly, Virginia, by the Department of Transportation, Federal Transit Administration (FTA), under request for quotations (RFQ) No. DTFT6015Q00013 for services to assist the FTA Office of Budget and Policy. C&C argues that the FTA miscalculated the firm's quotation and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

On June 19, 2015, the FTA posted the RFQ on the General Services Administration (GSA) e-Buy system, seeking quotations from firms holding FSS contracts under

the Financial and Business Solutions schedule (Schedule No. 520) with special item numbers (SIN) 520-8 (Complementary Audit Services) and 520-11 (Accounting). Agency Report (AR) at 2; RFQ at 1. The RFQ set forth the required services in a statement of work, and described the scope generally as “assistance regarding the agency’s improvement of Internal Controls and Self-Assessment Activities in Compliance with Federal Managers Financial Integrity Act (FMFIA) and Office of Management and Budget (OMB) Circular No. A-123 programs.” Id. In response to a vendor question, the FTA further explained that “[t]he scope of work is FMFIA and OMB Circular [No.] A-123 Appendix-A.” RFQ amend. 1, attach. 1, Answers to Vendor Questions, at 20.

The RFQ anticipated the placement of a labor-hour order for a base year and four option years to the vendor whose quotation provided the best value. RFQ at 2-3. In addition to price, the best-value criteria had four non-price factors: technical merit (35 points), qualifications of key personnel and staffing (40 points), socio-economic considerations (10 points), and past performance (15 points). Id. at 6-7.

Under the technical merit factor there were seven equally-weighted subfactors. Id. at 3, 7-8. Under the qualifications factor, the RFQ provided that the agency would evaluate “representative resumes of staffing” to assess whether proposed personnel were qualified. Id. at 8. The socio-economic considerations factor provided for evaluation of the offeror’s socio-economic classification; in effect, small businesses would receive 10 points, and large businesses with significant small business participation would receive 3 points. Id. at 9. Under the past performance factor, the RFQ required each vendor to submit information on at least three similar and relevant contracts or subcontracts, which the agency would evaluate using two subfactors: relevance (10 points), and the quality of performance as reported in the Past Performance Information Retrieval System (PPIRS) (5 points). Id. at 10.

With respect to price, the RFQ provided for vendors to identify the applicable GSA schedule labor categories, hours, and rates, and provided a labor estimate of 4,860 hours per year, divided among four labor categories. RFQ attach. 3, Labor Estimate Matrix, at 1-2. The price evaluation would assess the reasonableness and consistency of the vendor’s proposed labor categories, its FSS contract, and its technical approach. RFQ at 11. Additionally, the agency would assess the reasonableness of the vendor’s level of effort and discounts. Id.

The RFQ also defined adjectival ratings for the overall evaluation: Outstanding (score from 90 to 100 points) was described as a quotation that significantly exceeded task area requirements and posed no risk. Id. Better (70 to 89 points) represented a quotation that fully met all task area requirements, exceeded most tasks, and posed “nominal risk.” Id. Acceptable represented a quotation that met

some task requirements with a comprehensive understanding, but a “shallow or lacking” technical approach to some requirements, and a moderate risk. Id.¹

Although the RFQ did not identify the relative importance of price compared to the non-price factors, it stated the basis for award as a determination of which quotation provided “the best value . . . and results in the lowest overall cost alternative to meet the Government’s needs.” Id. at 13. Nevertheless, the RFQ then stated that award could be made “to other than the offeror proposing the lowest price” and that the agency would not award “at a significantly higher overall cost to the Government to achieve slightly superior technical features.” Id.

On July 16, the FTA received quotations from nine firms, including both C&C and AOC (the incumbent contractor). The quotations were evaluated by four evaluators. For each subfactor, the evaluation worksheets provided space to assign a factor or subfactor score, and to provide narrative comments. The evaluators then prepared an evaluation summary report memorandum. The report first listed scores excluding the past performance factor, which showed AOC with a score of 72.75 points, while C&C’s score was 67.75 points. AR, Tab 6a, Evaluation Summary Report Memorandum, at 1. The report then separately listed past performance scores of 13.25 for AOC, and 14.25 for C&C. Id. at 2.

The evaluators provided two spreadsheets to accompany the report. The first listed the individual evaluators’ scores, and then an average score (excluding past performance) and a resulting adjectival rating: AOC’s quotation was rated better, while C&C’s was rated acceptable.² AR, Tab 6b, Evaluation Spreadsheet, at 1. The first spreadsheet also synopsised the significant strengths, strengths, weaknesses, and significant weaknesses that the evaluators had identified for each vendor’s quotation. For AOC, the spreadsheet identified one technical strength: the firm’s quotation “met all technical merits” and its personnel “met qualification

¹ The RFQ also defined adjectival ratings for the past performance factor: excellent (15 points), very good (14 points), good (12 points), fair (11 points), poor (9 points), and neutral (“7.5 rounded to 8 points maximum”). RFQ at 12-13; cf. 41 U.S.C. § 1126(b) (unknown past performance “may not be evaluated favorably or unfavorably”).

² The RFQ indicated that the adjectival ratings would be applied to the “overall proposal” (that is, to be assessed using 100 points, which necessarily had to include the past performance factor), but the evaluators excluded the past performance evaluation in assigning the adjectival ratings for reasons not apparent in the record. Regardless, as explained below, neither point scores nor adjectival ratings—even if accurately applied—could have substituted for an understanding of the qualitative differences among quotations that was required for a reasoned source selection tradeoff.

requirements.” Id. For Castro, the spreadsheet likewise identified one technical strength: the firm’s approach to all seven tasks showed “extraordinary wealth of knowledge, applicable skills, and their method . . . which will lead to a comprehensive [vi]ew of the organization” Id.

The second spreadsheet provided the past performance factor scores, and identified as a strength for AOC that it “met all the requirement[s] in Subfactor and Tasks, Staff qualifications and PP [past performance].” AR, Tab 6c, Past Performance Evaluation Spreadsheet, at 2. For C&C, the past performance spreadsheet identified as a strength its “qualifications, education, and tech[nology],” but listed as a weakness that “one PP did not fulfill the complete scope of work and [statement of work].”³ Id. The second spreadsheet also showed the total scores (this time including past performance) for each quotation: 86 for AOC, and 82 for C&C, but did not apply adjectival ratings to the total scores. Id. at 1-2.

On September 18, the contracting officer prepared a source selection decision. The decision stated that AOC had received the highest total score, that its PPIRS records were “acceptable,” and that its revised total price of \$2.3 million⁴ was reasonable and acceptable. AR, Tab 6e, Source Selection Decision, at 3-6. The source selection decision then stated that other quotations were close to AOC’s in terms of their total scores, but that they “did not appear to represent the best value to the Government due to the evaluation.” Id. at 4-5. The contracting officer concluded that AOC was a responsible vendor and selected the firm’s quotation for award. Id. at 5-6.

On September 23, the FTA issued a notice that it had awarded the order to AOC. C&C then requested a debriefing. On September 28, the contracting officer responded that no debriefing was required under the applicable FSS ordering procedures, but a brief explanation would be given. The brief explanation letter stated that C&C’s quotation contained “some weaknesses,” and more specifically:

³ As discussed below, in the version of this spreadsheet submitted in the record, the entry for this weakness then continued with a note. The note was evidently added by the contracting officer at a later date, and stated that the weakness narrative for C&C was incorrect and would be omitted. AR, Tab 6e, Source Selection Decision, at 1.

⁴ For reasons not identified in the record, the source selection decision recites that the agency requested pricing “clarification,” in response to which AOC was then permitted to submit revised pricing on September 10 and 14. Id. at 4. C&C did not raise a timely challenge to this procedure, which was disclosed in the redacted agency report, so we express no views on it. Although the record does not contain the prices of other vendors, the FTA describes C&C’s price as “approximately \$298,000 less than the final price proposal awarded, but not the lowest among all proposals.” AR at 13; see also Protest at 12.

1. One Past Performance did not fulfill the complete scope of work and Statement of Work (SOW).
2. [name deleted] (Entry Level Internal Auditor) is the only one with actual OMB/A-123/FMFIA experience. All other key personnel have a strong understanding of OMB/A-123.

AR, Tab 1c, Brief Explanation Email from Contracting Officer to C&C, Oct. 15, 2015, at 1.⁵

C&C responded the same day to argue that both listed weaknesses were factually erroneous. C&C's response also requested that the contracting officer provide a complete statement of all of the evaluated weaknesses in the firm's quotation. The contracting officer replied in an email, and listed four technical factor weaknesses, one staffing qualifications factor weakness (which had been item 2 in the October 15 letter), and one past performance factor weakness (item 1 in the October 15 letter). AR, Tab 1d, Email from Contracting Officer to C&C, Oct. 16, 2015, at 1. This protest followed.

ANALYSIS

Timeliness

The FTA has argued that the protest should be dismissed as untimely because the protester "was aware that its [quotation] was inadequate" when it received notice of the award. AR at 6. The FTA correctly observed that our Bid Protest Regulations provide that, where a debriefing is legally required, a protest challenging the award that is filed within 10 days after the debriefing is timely, and that no debriefing was legally required here because the procurement involved an order under the FSS. Agency Dismissal Request at 5. Based on those principles, the FTA argues that C&C's protest, which was filed on October 26, is untimely because it was filed more than 10 days after the September 23 notice of award. Id. at 6.

The FTA is partially correct: the provision of our timeliness rules regarding required debriefings is inapplicable in this FSS procurement, see MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 6-7. Nevertheless, the exception is superfluous because our basic timeliness rule is that a protest challenging a contract award (or as here, an FSS order) must be filed "not later than 10 days after the basis of protest is known or should have been known (whichever is earlier)." 4 C.F.R. § 21.2(a)(2). Regardless of the fact that C&C first received the information giving rise to its protest through a brief explanation letter, rather than a debriefing,

⁵ The second weakness is nearly identical to the weakness listed on the fourth evaluator's worksheet as the sole basis for that evaluator assigning C&C only 10 out of 40 available points. See AR, Tab 6d, Individual Evaluator Worksheets, at 5.

the protest was timely because it was filed within 10 days of when C&C learned the information. The FTA has not shown that C&C knew or should have known the factual basis for its protest--the substance of the evaluation and the source selection rationale--until C&C received the October 15 brief explanation letter.⁶ The protest was filed within 10 days of when C&C received that letter, and the letter provided the factual basis for the protest,⁷ so the protest is timely. 4 C.F.R. § 21.2(a)(2). Accordingly, we have no basis to dismiss the protest.⁸

Protest Arguments

C&C argues that the weaknesses identified in its quotation were improper, and that the source selection decision lacks a rational basis. First, with respect to the weakness under the qualification factor, C&C argues that the FTA evaluators ignored expressly-identified experience with OMB Circular No. A-123, appendix A, and FMFIA that was reflected in multiple resumes in its quotation, not just the one entry-level employee. Protest at 9-11. Next, C&C argues that the past performance weakness for one past performance reference was based on an unreasonable evaluation and unstated evaluation criteria. Protest at 8. Finally, C&C argues that the contracting officer's source selection was unreasonable both because of the evaluation errors and because it failed to justify paying AOC's significantly higher price. Protest at 12.

⁶ The award notification letter simply stated that AOC's quotation had been deemed the best value, but provided no further information about the evaluation. AR, Tab 1b, Letter from Contracting Officer to C&C, Sept, 23, 2015, at 1.

⁷ Since October 25 was a Sunday, the tenth day following receipt of the brief explanation letter on October 15 became Monday, October 26. See 4 C.F.R. § 21.0(d) (definition of days).

⁸ The FTA also argued that C&C's quotation was ranked sixth (a claim for which supporting facts are at best unclear in the record), and that the protest should therefore be dismissed because C&C is not an interested party. AR at 6. Additionally, the FTA argued that the protest made only general claims, and so, should be dismissed because it lacked a factual and legal basis. Id. To the contrary, the protester argues, first, that the evaluation of C&C's quotation was factually incorrect; second, that the source selection was based on the erroneous evaluation; and third, that the source selection decision had disregarded C&C's lower price. Protest at 7-12. The protest also set out the factual support and reasoning for those arguments. Id. In our view, C&C provided a factual and legal basis to argue that but for the alleged evaluation and source selection errors, there was a reasonable likelihood that C&C would have been selected for award, and further, that the protest set forth a sufficient factual and legal basis for our Office to decide the merits of its protest.

With respect to C&C's challenge to the weakness under the qualifications factor, the agency argues that the evaluation was appropriate because the resumes listed FMFIA experience as "skills and achievements," and not as experience. AR at 10. Additionally, the agency explains, the protester's resumes showed experience with appendix C of OMB Circular No. A-123, rather than with appendix A. AR at 11.

As for the past performance weakness, the agency concedes that it "has discovered that its description of the Protester's past performance was perhaps incorrectly stated" in the October 15 brief explanation letter (which, as noted above, was then repeated in the October 16 email). Nevertheless, the agency argues that one evaluator stated that C&C had experience with OMB Circular No. A-123, appendix A, and FMFIA, but "with only one client." AR at 10. The agency then argues that the incorrect weakness in the brief explanation letter and email is insignificant because those were "not a detailed breakdown of the Protester's scores." AR at 10.

Finally, with respect to the source selection decision, the agency argues that the contracting officer was not required to provide a detailed rationale for selecting AOC's quotation because the procurement was conducted under Federal Acquisition Regulation (FAR) subpart 8.4. AR at 12. Further, the agency argues that the evaluators' individual score sheets provide narrative explanations that support the source selection. AR at 13. With respect to the consideration of price, the agency states that it recognizes that C&C's price was \$298,000 lower than AOC's, but argues that this fact is insignificant because other vendors quoted even lower prices. Id. The agency also argues that there was "additional concern" because C&C's FSS contract would expire in 2018 (that is, without consideration of options, which C&C states will extend the FSS contract through 2028). Id. The agency states that it would have had to negotiate new prices with C&C in 2018. Id. at 14 (quoting FAR § 8.405-4).⁹ Ultimately, the agency argues, C&C's total score was 67.75, which was 5 points below AOC's total score of 72.75.¹⁰ Id.

As explained below, we agree with C&C that neither the evaluation nor the source selection decision is reasonable. There is also no support in the contemporaneous record for several arguments raised by the agency, such as its claim to have considered the prices of C&C and other vendors, or to have considered C&C's

⁹ This provision requires an agency to seek price reductions when placing an order above the simplified acquisition threshold. The agency does not explain the interpretation of FAR § 8.405-4 to require renegotiation of prices on an existing order in 2018, so that it could exercise an option within that order. See FAR clause 52.216-22(d).

¹⁰ It is unclear why the agency report bases its arguments on these scores, which, as discussed above, excluded the past performance factor, rather than the total scores for C&C and AOC, which were 82 and 86, respectively.

proposal to have multiple weaknesses under the technical factor. We address the main arguments in turn.

Past Performance Evaluation

In reviewing a protester's challenge to an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. Determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion, so our Office will examine the agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria, applicable statutes, and regulations. SST Supply & Serv. Team GmbH, B-409873, Sept. 2, 2014, 2014 CPD ¶ 251 at 2-3.

The contemporaneous record of the past performance evaluation appears to show that the agency assigned a weakness to C&C's quotation because the scope of one of its past performance references was viewed as not being closely matched to the FTA's statement of work, which was the only weakness for C&C listed in the spreadsheets attached to the evaluation summary report. The contracting officer cited the weakness in the brief explanation letter on October 15, and again in the email rejoinder sent to the protester a day later.

Notwithstanding the apparent reliance on this aspect of the evaluation throughout the procurement, when submitted to our Office, the record also contained a notation in the spreadsheet regarding the weakness. The notation began with the contracting officer's initials, stated that the weakness was "not reflected correctly here in this document and will be omitted as written," and then made a general reference to the individual evaluations. Nevertheless, the notation appears inconsistent with other aspects of the record, including the contracting officer's continued reliance on the weakness when explaining the evaluation after award.

Our Office requested that the FTA submit a supplemental agency report, and included several questions in that request. Among them, whether the notation had been added later, and whether the record showed that the notation had any effect on the evaluation of C&C. Fax from GAO to Parties, Dec. 8, 2015, at 1. In response, the FTA's supplemental AR did not explain when the notation was added, but simply stated that it had been added "for documentation purposes regarding the file and as a reminder note for further discussion." Supplemental AR at 4. The explanation also stated that the contracting officer had determined that the consensus evaluation should be amended, but

[a] modified version of this spreadsheet clarifying this note cannot be located. The ratings provided did not appear to change yet we (procurement) were reminded by the Technical Evaluation Chairperson

the team had discussed and verbally supported their [quotation] evaluations.

Id.

This explanation by counsel in the supplemental AR is vague, inconsistent with the contemporaneous documents in the record, and does not respond to our Office's question about when the notation was added to the spreadsheet. Although the agency claims that the evaluation took into account that this weakness was invalid, the contemporaneous documentation appears to undermine its position. In particular, C&C's scores did not change, and the weakness was reiterated twice after award by the contracting officer in explaining the basis for rejecting C&C's quotation. Thus, even if there were evidence that the note was added before the agency selected AOC, the record of the past performance evaluation is contradictory, so we cannot conclude that the past performance evaluation was reasonable.

Qualification Factor Evaluation

The evaluation summary report and spreadsheets did not identify any qualification factor weaknesses (or deficiencies) for C&C. Nevertheless, the FTA listed a weakness for C&C in its brief explanation of the award, which appears to have been taken--in nearly identical language--from an issue identified by one evaluator for downgrading C&C significantly (to 10 points out of 40) in that individual's evaluation. That individual's assessment of the weakness was not only omitted from the evaluation summary report, but also more broadly, that individual's evaluation contrasts strikingly with the views of the other three evaluators, each of whom gave C&C high ratings (35 points, 40 points, 40 points) for the factor.

In response to C&C's argument that the qualifications factor evaluation was unreasonable because multiple resumes submitted in its quotation showed experience with FMFIA (i.e., not just the single entry-level employee), the agency's response is unpersuasive. For example, the FTA argues that the experience of one of C&C's proposed auditors was with Appendix C of OMB Circular No. A-123, rather than appendix A. AR at 11. Although C&C's resumes did show experience with appendix C, the agency's argument is insufficient because it does not take into account that multiple resumes in C&C's quotation appear to show experience using appendix A. Similarly, the FTA's explanation that proficiency with FMFIA was disregarded because it was listed as "skills and achievements" in one resume, rather than experience, AR at 10, does not provide a reasonable basis for disregarding it in the evaluation. Finally, the record does not reconcile how FMFIA experience that was expressly set forth in one senior employee's resume (AR Tab 2a, C&C Technical Quotation, appx. A, at 4) is consistent with the agency's evaluation finding that only a single entry-level employee had such experience. As a result, the evaluation of C&C's quotation under the qualifications factor is inconsistent with the contemporaneous record, and so, was unreasonable.

Evaluation Report and Source Selection Decision

The record shows that the technical evaluation report did not reflect a consensus of the evaluators, but simply provided a mathematical average of the individual evaluators' scores assigned to the vendors. The accompanying spreadsheets listed the individual evaluators' scores, the resulting average, and narrative strengths for each firm (and, for C&C, the invalid past performance weakness discussed above). By simply averaging the individual evaluators' scores, by not considering that the only weakness identified in the evaluation report spreadsheets for C&C was apparently invalid, and by making no effort to reconcile or explain the significantly negative views of one evaluator with the strongly positive views of the other three, the evaluation report provided an unsound foundation on which to base a source selection decision.

Even apart from those issues, the source selection decision was unreasonable. This procurement was a competition among FSS vendors for services defined by a statement of work. See FAR § 8.405-2. An agency evaluation may assign adjectival ratings and point scores, but those are guides to--not substitutes for--intelligent decisionmaking. Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 4. Scores and ratings do not mandate automatic selection of a particular proposal. Midland Supply, Inc., B-298720.3, May 14, 2007, 2007 CPD ¶ 104 at 5. Source selection officials have broad discretion in determining the manner and extent to which they will make use of, not just the adjectival ratings and point scores, but also the written narrative justification underlying those technical results, subject only to the tests of rationality and consistency with the evaluation criteria. Id. The propriety of the price/technical tradeoff decision turns on whether the selection official's judgment concerning the significance of the difference in the technical ratings was reasonable and adequately justified. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

The sole rationale of the FTA's source selection decision here was AOC's high score, without discussing what, if anything, the difference between the technical scores of AOC and C&C actually signified. The record contains no evidence that the agency compared the qualitative strengths and weaknesses of AOC's quotation to those of C&C's quotation, or justified why any advantages of AOC's quotation were worth a \$298,000 premium. Such a mechanical evaluation and tradeoff does not provide a reasonable basis on which to base a source selection decision. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 6. Indeed, in contrast to the impression conveyed by AOC's higher score and adjectival rating, the technical report narrative described C&C's quotation as providing "extraordinary wealth of knowledge, applicable skills, and their method . . . which will lead to a comprehensive [vi]ew of the organization," while the narrative for AOC's quotation simply states that the firm's technical approach and personnel "met" the requirements. AR, Tab 6b, Evaluation Spreadsheet, at 1. Despite this, there is no sign in the source selection decision

that the contracting officer compared the evaluated merits of any quotations or their prices.

The source selection decision is thus improper, both because it is based on the miscalculation of C&C's quotation, and because it fails to document a reasoned source selection rationale. The source selection decision shows only that the contracting officer considered the evaluated point scores and found that the incumbent, AOC, had the highest score. There is no indication that the contracting officer considered the merits of the evaluations; the decision lists only scores. There is no indication that the contracting officer considered C&C's or other vendors' lower prices; the decision lists only AOC's price, and compares it only to a government estimate. Although the RFQ provided for a tradeoff among non-price and price factors, the source selection decision shows that AOC's quotation was selected simply because it had the highest score and an acceptable price. There was no meaningful consideration of the other vendors' evaluations (beyond their total point scores) or their prices. The source selection decision is thus unreasonable and inconsistent with the RFQ.

RECOMMENDATION

We recommend that the FTA reevaluate, at a minimum, the quotations from AOC and C&C, prepare a new evaluation report, conduct a tradeoff that meaningfully considers the substance of the evaluation, make a new source selection decision, and reasonably document the basis for tradeoffs consistent with the terms of the RFQ. If the FTA selects a vendor other than AOC, we recommend that the FTA terminate the order to AOC and issue an order to the vendor whose quotation provides the best value under the criteria in the RFQ. We also recommend that the FTA reimburse the protester the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling
General Counsel