



Decision

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Matter of: Global Linguist Solutions, LLC--Costs

File: B-417015.19

Date: March 20, 2020

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DIGEST

Protester's request that GAO recommend the reimbursement of protest costs is granted where the record shows that the agency unduly delayed taking corrective action in response to clearly meritorious protest grounds.

DECISION

Global Linguist Solutions, LLC (GLS), of Chantilly, Virginia, requests that we recommend the Department of the Army reimburse it for the reasonable costs of filing and pursuing its protest of the agency's decision to issue a task order to Valiant Government Services, LLC, of Hopkinsville, Kentucky, under request for task order proposals (RTOP) No. W911W4-17-R-ARCEN. The Army issued the RTOP for linguist support services for the Army's Central Command area of responsibility. The protester contends that the agency failed to take prompt corrective action in response to clearly meritorious protest grounds.

We grant the request.

BACKGROUND

On September 21, 2017, the Army issued the RTOP under the Department of Defense's Language Interpretation and Translation Enterprise II (DLITE II) contract vehicle. The Army issued the RTOP to acquire linguist support capability in support of the Combined Joint Task Force-Operation Inherent Resolve, the Department of State Office of Special Cooperation-Iraq, and the U.S. Army Central Command. The RTOP contemplated that

the resulting cost-plus fixed-fee task order would have a 1-year base period and four 1-year option periods.

On July 31, 2019, the Army notified GLS that the task order had been issued to Valiant. Following a debriefing, GLS filed a timely protest, which our Office docketed as B-417015.7, challenging the agency's evaluation of Valiant's cost and technical proposals, its failure to credit GLS's proposal with additional strengths, its discussions with both GLS and Valiant, and its best-value tradeoff determination. On September 18, the Army provided an agency report responding to these protest grounds.

On September 26, GLS filed a supplemental protest (docketed as B-417015.13), arguing that the Army unreasonably failed to verify if Valiant could legally operate in the countries identified in the RTOP. On September 27, the agency requested dismissal of the supplemental protest. On October 3, our Office notified the parties that we intended to dismiss the supplemental protest.

On September 30, the protester filed its comments on the agency report. On October 2, the intervenor filed a dismissal request, asserting that the arguments raised in the comments amounted to untimely supplemental protests. On October 3, we denied the dismissal request and requested the parties provide supplemental briefing on the arguments raised in the protester's comments.

On October 4, the Army announced it would take corrective action in response to GLS's protest. The agency stated it would reevaluate proposals and make a new source selection decision. The agency also reserved the right to reopen discussions, if necessary, and solicit revised proposals.

Based on the corrective action, we dismissed the protests as academic. This request for a recommendation on reimbursement follows.

DISCUSSION

Our Office may recommend the reimbursement of protest costs, including reasonable attorneys' fees, if, based on the circumstances of the case, we determine that an agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1)(A); Bid Protest Regulations, 4 C.F.R. § 21.8(e). A protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. Triple Canopy, Inc.--Costs, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3.

The protester argues that the agency unduly delayed taking corrective action in response to three clearly meritorious protest grounds by waiting until after the protester had submitted comments on the agency report before taking corrective action.

Specifically, GLS requests the costs associated with its challenges to (1) the agency's cost realism evaluation, (2) the agency's evaluation of performance risk, and (3) the agency's best-value determination. See Protester's Comments on Agency Resp. to Request for Costs at 3. The Army does not dispute that the protester's initial challenges to the cost realism evaluation and the agency's best-value determination were clearly meritorious. The agency contends, however, that the remaining argument, that the agency's technical evaluation of Valiant's proposal failed to recognize certain performance risks, is not clearly meritorious and is readily severable from any meritorious grounds. Agency Resp. to Request for Costs at 13. As explained below, we find that this argument is not severable from GLS's clearly meritorious protest grounds.

As a general rule, a successful protester should be reimbursed the costs incurred with respect to all the issues pursued, not only those upon which it has prevailed. The Salvation Army Cmty. Corr. Program--Costs, B-298866.3, Aug. 29, 2007, 2007 CPD ¶ 165 at 7. In appropriate cases, however, we have limited our recommendation for the award of protest costs where a part of those costs is allocable to an unsuccessful protest issue that is so clearly severable from the successful issues as to essentially constitute a separate protest. Burns & Roe Servs. Corp.--Costs, B-310828.2, Apr. 28, 2008, 2008 CPD ¶ 81 at 3. In making this determination, we consider, among other things, the extent to which the claims are interrelated or intertwined, e.g., whether the successful and unsuccessful claims share a common core set of facts, are based on related legal theories, or are otherwise not readily severable. See Sodexho Mgmt., Inc.--Costs, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 29.

Here, we find that GLS's challenge to the agency's risk evaluation is based on a related legal theory, and many of the same core facts, as its meritorious complaint challenging the agency's cost realism analysis. That is, both allege errors stemming from the Army's failure to identify and account for Valiant's unrealistically low costs within its evaluation. For example, GLS asserted that the Army failed to consider "whether Valiant can believably deliver the promised performance at the drastically reduced price it proposed." Protest at 20. The protester contended that the agency's failure to examine these risks "prejudiced GLS which proposed realistic costs and prices that are consistent with its technical approach." Id. at 21. Based on these common facts and related legal theories, we conclude that severing is not appropriate here.

The Army also argues that GLS should not be reimbursed for the costs of raising challenges, within its comments on the agency report, to the agency's cost evaluation, evaluation of risk, and best-value determination. In this regard, the agency argues that GLS's comments contained "supplemental protest grounds," which were not clearly meritorious and on which the agency, at any rate, took prompt corrective action. Agency Resp. to Request for Costs at 15.

Based on our review of GLS's comments, we conclude that the protester should be reimbursed for the costs of preparing its challenges to the cost evaluation, the risk evaluation, and the best-value determination in its September 30 comments. In this

respect, we find that these arguments do not constitute supplemental protest issues, and instead represent continuations of arguments that were originally raised within GLS's initial protest. As such, we see no basis to sever the costs associated with raising these arguments.

RECOMMENDATION

Accordingly, for the protest grounds noted above, we recommend that the Army reimburse GLS the reasonable costs of filing and pursuing its protest challenging the agency's decision to issue a task order to Valiant. GLS should file its claim for costs, detailing and certifying the time expended and costs incurred, with the agency within 60 days of receipt of this recommendation. 4 C.F.R. § 21.8(f)(1).

The request is granted.

Thomas H. Armstrong
General Counsel