

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: IAP World Services, Inc.

File: B-418735.3; B-418735.4

Date: April 30, 2021

Anuj Vohra, Esq., Abigail T. Stokes, Esq., Craig D. Barrett, Esq., William O'Reilly, Esq., and Jakub S. Wisniewski, Esq., Crowell & Moring LLP, for the protester.
Keith R. Szeliga, Esq., Adam Bartolanzo, Esq., and Nikole Snyder, Esq., Sheppard Mullin Richter & Hampton LLP, for TechFlow Mission Support, LLC d/b/a/ EMI Services, the intervenor.

Christopher J. Robbins, Esq., and Seth Eddy, Esq., Department of the Navy, for the agency.

Lois Hanshaw, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly made its source selection decision is dismissed where the protester's proposal was ranked third overall and would not be in line for award in the event its allegations were sustained.

DECISION

IAP World Services, Inc. (IAP), of Cape Canaveral, Florida, protests the award of a contract to TechFlow Mission Support, LLC, d/b/a/ EMI Services (EMI), of Idaho Falls, Idaho, under request for proposals (RFP) No. N62470-18-R-3006, issued by the Department of the Navy for base operations support services at Naval Air Station Patuxent River, Maryland. IAP contends that the best-value tradeoff determination was flawed and the identity of the awardee is ambiguous.

We dismiss the protest.

BACKGROUND

Issued on January 14, 2019, the RFP contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract. Agency Report (AR), Tab 2, RFP at 340. The Navy sought a contractor to furnish tasks such as labor, supervision, management, and tools for services such as management and administration, public safety, air

operations, and port services at Naval Air Station Patuxent River for a base year and seven 1-year option periods not to exceed a total of eight years. *Id.* at 11.

The RFP contemplated award on a best-value tradeoff basis, considering five evaluation factors: corporate experience, safety, small business utilization (SBU), past performance, and price. *Id.* at 332. The corporate experience, safety, and SBU factors were of equal importance, and, when combined, were of equal importance to past performance. *Id.* When evaluated as a whole, the four non-price factors were approximately equal in importance to price. *Id.*

Seven offerors, including IAP and EMI, submitted proposals in response to the solicitation. After evaluating proposals, the agency made award to Vectrus-J&J Facilities Support, LLC on April 29, 2020. Following separate protests filed with our Office by Dyncorp International LLC, another unsuccessful offeror that responded to the RFP, and IAP, the Navy notified our Office of its intent to take corrective action in response to both protests. On May 28, we dismissed those protests. *DynCorp Int'l LLC, IAP World Servs. Inc.*, B-418735, B-418735.2, May 28, 2020 (unpublished decision).

After completing the corrective action, the agency rated proposals as follows:

	EMI	Offeror A	IAP
Overall Technical Rating	Outstanding	Outstanding	Outstanding
<i>Corporate Experience</i>	<i>Outstanding</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>Safety</i>	<i>Good</i>	<i>Outstanding</i>	<i>Outstanding</i>
<i>SBU</i>	<i>Outstanding</i>	<i>Outstanding</i>	<i>Outstanding</i>
Past Performance	Substantial Confidence	Substantial Confidence	Substantial Confidence
Price	\$128,970,743	\$167,762,516	\$168,464,044
Overall Ranking	1	2	3

AR, Tab 4, Source Selection Decision Document (SSDD) at 3.

In making award, the source selection authority (SSA) reviewed the reports of the source selection evaluation board (SSEB) and source selection advisory council (SSAC), conducted an independent review of offerors' proposals, and concurred with the SSEB's and SSAC's ratings and rankings of offerors. *Id.* at 3. Additionally, the SSA's best-value tradeoff compared the four offerors deemed eligible for award.¹ *Id.*

¹ After conducting discussions and requesting final proposal revisions, only six proposals were timely received. Joint Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 8. The agency concluded that two proposals were unawardable due to unacceptable ratings and did not rank these proposals. AR, Tab 4, SSDD at 3.

at 4. In this regard, the SSA compared EMI's proposal to the proposals of Offeror A and IAP, and concluded that EMI's proposal offered the best value. *Id.* at 3-7. In addition, the SSA also contemporaneously compared Offeror A's and IAP's proposals and concluded that Offeror A's proposal offered a better value than IAP's. *Id.* at 8-10. In comparing proposals, the SSA's analysis details the basis for the agency's rating under each evaluation factor, includes a determination of which proposal was more advantageous under each evaluation factor, and describes the agency's consideration of whether payment of a price premium was warranted. *Id.* at 4-13.

In comparing EMI's and Offeror A's proposals, the agency found that Offeror A's proposal had a slight advantage over EMI's for the corporate experience factor and a clear advantage over EMI's for the safety factor; the proposals were essentially equal under the SBU and past performance factors. *Id.* at 5. The SSA also noted EMI's proposal "enjoys a large advantage over [Offeror A's] in the price factor, which is weighted equally to the totality of the non-price factors." *Id.* Based on the weight of all factors, the SSA concluded that advantages in Offeror A's proposal under the corporate experience and safety factors did not justify the payment of a \$38.7 million, or 30 percent, price premium. *Id.* Thus, the SSA concluded that EMI's proposal offered the government a better value than Offeror A's. *Id.*

In comparing EMI's and IAP's proposals, the SSA found that IAP's proposal offered a slight advantage under the corporate experience and SBU factors, an advantage under the safety factor, and that the proposals were essentially equal under the past performance factor. *Id.* at 6. In determining that EMI's proposal was a better value than IAP's, the SSA weighed and balanced the evaluation factors and concluded that IAP's non-price advantages did not warrant the payment of a \$39.5 million, or 31 percent, price premium. *Id.*

Additionally, of particular importance to this protest, the SSA contemporaneously conducted a direct comparison of the proposals of IAP and Offeror A and found that Offeror A's proposal offered the government a better value than IAP's. *Id.* at 8-10, 14. Specifically, the SSA found that the proposals were essentially equal under the corporate experience and past performance factors, Offeror A's proposal offered a slight advantage under the safety factor, and IAP's proposal offered a slight advantage under the SBU factor. *Id.* at 10. The agency concluded that these advantages offset each other and that the offerors were essentially equal under the non-price factors. *Id.* In determining that Offeror A's proposal was a better value than IAP's, the agency weighed and balanced the evaluation factors, and expressly concluded that IAP's slight advantage under the SBU factor was not significant enough to justify the payment of a price premium of between \$592,157 to \$701,528.² *Id.*

² The agency noted that Offeror A's price advantage would not change if the cost of certain exhibit line items was deducted from IAP's price. AR, Tab 4, SSDD at 10. IAP did not challenge the agency's conclusions regarding this issue.

As a result of these comparisons, the SSA ranked proposals, with number one being the highest rated. In this regard, the agency ranked EMI's proposal as number one because it presented the best value to the government. *Id.* at 14. Offeror A's proposal was ranked second because it presented a better value than IAP's proposal. *Id.* IAP's proposal was ranked third. *Id.*

The agency also noted that the proposals of Offeror A and IAP offered slightly superior non-price proposals that carried less risk when compared to EMI's. *Id.* However, in considering the technical features in the context of the weight assigned to each factor--*i.e.*, the four non-price factors were equal to price--the SSA concluded that the marginally reduced technical risk did not warrant the payment of the large price premiums associated with Offeror A's and IAP's proposals. *Id.* The SSA made award to EMI and notified IAP of award on January 14, 2021.

After requesting and receiving a debriefing, IAP timely protested to our Office and supplemented its protest prior to the receipt of the agency report.³

DISCUSSION

IAP argues that the agency's best-value determination was flawed in that the agency failed to meaningfully compare non-price proposals which resulted in a *de facto* lowest-priced, technically acceptable (LPTA) award basis. Protest at 12. In its supplemental protest, IAP contends that the identity of the awardee was ambiguous. Supp. Protest at 2.

In response to the protest, the agency filed an agency report addressing the initial and supplemental grounds. As part of the agency report, the agency produced its source selection decision, which shows that the agency contemporaneously found that Offeror A was in line for award ahead of IAP--*i.e.*, an intervening offeror. AR, Tab 4, SSDD at 8-10, 14. Additionally, the agency's memorandum of law also asserts that due to the presence of an intervening offeror, the protester was neither an interested party to challenge the identity of the awardee, nor competitively prejudiced if the agency had erred in identifying the awardee. COS/MOL at 17-18. Despite the ranking information identified in the source selection decision and the arguments raised by the agency, IAP's comments on the agency report did not challenge either the evaluation of Offeror A's proposals or the agency's best-value tradeoff conclusions relative to Offeror A, and offered no response to the agency's interested party and prejudice arguments. See Comments *generally*.

After receiving the protester's comments, our Office sought additional briefing from the protester. In this regard, we requested that the protester show how it was either an interested party to raise its challenges or competitively prejudiced by the agency's

³ The debriefing stated that 6 revised proposals were received and IAP's was ranked number 3 overall. AR, Tab 8, Debriefing at 6.

actions, given that the record showed the presence of an intervening offeror. GAO Req. for Additional Briefing at 1.

In response to our request for additional briefing, IAP argues that it asserted in its protest and comments that IAP is an interested party. In this regard, IAP argues that a protester need not challenge the evaluation of any intervening offeror where the correction of procurement errors identified by the protester would improve the protester's competitive standing relative to all offerors. Resp. to Req. for Additional Briefing at 4. IAP additionally contends that it challenged the agency's actions relative to EMI and Offeror A when it alleged that its proposal was "superior to all other offerors" and that the strengths of IAP's proposal offered advantages "over other offerors." *Id.* at 2. Based on the record before us, we find that IAP is not an interested party to challenge the agency's actions and dismiss the initial and supplemental protest allegations.

In order for a protest to be considered by our Office, a protester must be an interested party, meaning it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. § 21.0(a); *Navarro Research & Eng'g, Inc.*, B-418602.2, B-418602.5, June 10, 2020, 2020 CPD ¶ 193 at 15. A protester is an interested party to challenge the evaluation of the awardee's proposal where there is a reasonable possibility that the protester's proposal would be in line for award if the protest were sustained. *Vertical Jobs, Inc.*, B-415891.2, B-415891.4, Apr. 19, 2018, 2018 CPD ¶ 147 at 8. Where, as here, there is an intervening offeror who would be in line for the award if the protester's challenge to the award were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify as an interested party. *Morpho Detection, Inc.*, B-410876, Mar. 3, 2015, 2015 CPD ¶ 85 at 7.

Here, the record shows that there was an intervening offeror, Offeror A, with a proposal offering a lower proposed price and equivalent technical ratings to the ratings assigned to the IAP's proposal. AR, Tab 4, SSDD at 10. The record also shows that the agency contemporaneously found the intervening offeror's proposal was a better value than IAP's proposal, during a direct comparison of the two proposals. *Id.*

In response to our request that the protester demonstrate its interested party status, IAP contends that it need not specifically challenge the agency's evaluation of Offeror A's proposal "[w]here the correction of procurement errors identified by a protester would improve that protester's competitive standing relative to all offerors." Resp. to Req. for Additional Briefing at 4 (emphasis in original). Notably, IAP does not challenge its own technical evaluation. Instead, the initial protest challenges the agency's best-value tradeoff determination and the supplemental protest alleges that the identity of the awardee was ambiguous. Thus, the correction of any procurement errors would relate only to these two allegations.

As stated above, if our Office were to sustain a protester's challenge to the agency's award decision and there is an intervening offeror who would be in line for the award,

the intervening offeror has a greater interest in the procurement than the protester. *Morpho Detection, Inc., supra*. We have explained that in instances where there is an intervening offeror, a protester must show, by challenging the evaluation of the intervening offeror, that either it possess the requisite interest to raise certain challenges or that its competitive position could change based on errors in the evaluation.⁴ *Compare Metropolitan Interpreters & Translators, Inc.*, B-403912.4 *et al.*, May 31, 2011, at 12 (protester's challenge to best-value determination considered on the merits where protester challenged intervening offeror), *with Sotera Def. Sols., Inc.*, B-414056 *et al.*, Jan. 31, 2017, 2017 CPD ¶ 46 at 8 (protester's challenge to award decision, including allegation that agency converted award basis from best-value tradeoff to LPTA, is dismissed where protester failed to challenge intervening offeror who was next in line for award). Therefore, based on the challenges raised by the protester, IAP would need to specifically challenge the intervening offeror in order to show that it was an interested party. Accordingly, we find the protester's argument here unpersuasive.

Finally, in our view, the record does not support IAP's contention that it challenged the evaluation or award of Offeror A's proposal. Although IAP's filings do include general statements about all or other offerors, the records shows that IAP's substantive challenges were limited to the agency's award decision relative to EMI's proposal. For example, in its protest, IAP argues that the Navy's failure to draw distinctions between IAP's and EMI's non-price proposals prejudiced IAP. Protest at 14. Similarly, in its comments, IAP contends that an appropriate weighing of IAP's non-price advantages would have shown the Navy that IAP's proposal held a clear advantage over EMI's, and, accordingly, IAP was prejudiced by the agency's award decision. See, Comments at 9. Thus, on the facts before us, we cannot reasonably conclude that IAP raised challenges to the intervening offeror.

Consequently, even if we found that all of IAP's protest allegations had merit, Offeror A, rather than IAP, would be next in line for award. As a result, we conclude that IAP is not an interested party to challenge the agency's award decision or the identity of the

⁴ IAP also argues that it was competitively prejudiced by the agency's flawed best-value evaluation and that IAP would have a substantial chance for award if EMI had been excluded from the tradeoff determination due to the ambiguity in the identity of the offeror. Resp. to Req. for Additional Briefing at 2. We dismiss this argument because it fails to show competitive prejudice. Prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. *Interactive Gov't Holdings, Inc.*, B-414071, B-414071.2, Feb. 2, 2017, 2017 CPD ¶ 131 at 7. Even if IAP's argument was correct, the intervening offeror would nevertheless be next in line for award ahead of the protester. Accordingly, IAP could not have been competitively prejudiced by any errors in the agency's best-value tradeoff evaluation, including the identity of the awardee. See, e.g., *enerGies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 9 (protester not prejudiced by agency's actions where an intervening offeror would be in line ahead of the protester).

awardee because it would not be in line for award in the event we sustained these challenges; rather, Offeror A would be next in line for award.

The protest is dismissed.

Thomas H. Armstrong
General Counsel