



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

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.

Matter of: Geiler/Schrudde & Zimmerman

File: B-412219; B-412219.2; B-412219.3

Date: January 7, 2016

Frank V. Reilly, Esq., Frank V. Reilly Attorney at Law, for the protester.
Pamela J. Mazza, Esq., Peter B. Ford, Esq., and Patrick T. Rothwell, Esq., Piliero Mazza PLLC, for the intervenor.
Tracy Downing, Esq., Department of Veterans Affairs, for the agency.
Elizabeth Witwer, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the awardee's proposal violated the solicitation's subcontracting limitation clause is denied where the awardee's proposal did not, on its face, indicate that the awardee would not comply with the limitation.
 2. Protest alleging that the agency was required to evaluate and accept an alternate price proposal is denied where the solicitation did not permit the submission of alternate proposals.
 3. Protest that the awardee's proposal was technically unacceptable because it failed to comply with the solicitation's experience requirements is dismissed where the protester failed to timely file comments in support of this ground.
-

DECISION

Geiler/Schrudde & Zimmerman JV (GSZ), a service-disabled veteran-owned small business (SDVOSB), of Cincinnati, Ohio, protests the award of a contract to Innovative Support Solutions, Inc. (ISS), a SDVOSB, of Elmhurst, Illinois, under request for proposals (RFP) No. VA249-15-R-0311, which was issued by the Department of Veterans Affairs (VA) to upgrade the chiller plant at the VA Medical Center in Lexington, Kentucky. GSZ alleges that its proposal was the lowest-priced, technically acceptable, and that it should have received the award.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RFP was issued on May 27, 2015, as a SDVOSB set-aside, and sought proposals to furnish all equipment, materials, labor, supervision, and quality control to upgrade the chiller plant at the Lexington VA Medical Center. RFP at 1. The work will require partial demolition and renovation of the existing chiller plant and the construction of a new two-story addition. Id. at 6.

The RFP provided that the VA would award the contract to the offeror whose proposal represented the lowest-priced, technically acceptable offer. Id. at 29. The RFP further provided that, to be considered for award, an offeror's proposal needed to receive a rating of acceptable under the following four factors: construction management, technical management, past performance, and price. Id. at 30-31. As relevant here, an offeror's experience was a consideration under both the construction management and past performance factors. Id. With respect to price, offerors were required to provide a "detailed price breakdown," including "labor, disciplines, sub-disciplines, materials, profit, and overhead." Id. at 31.

Of relevance to GSZ's protest, the RFP incorporated, by reference, VA Acquisition Regulation (VAAR), 48 C.F.R. clause 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside. RFP at 40. This clause requires, in relevant part, that during performance of a general construction contract, an SDVOSB contractor agrees that "at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other eligible [SDVOSB] concerns." VAAR clause 852.219-10(c)(3).

Evaluation of Proposals

The VA received proposals from six offerors, including GSZ and ISS by the RFP's closing date of July 17. Agency Report (AR), Tab B, Abstract of Offers, at 21-22. The VA began its evaluation by ranking the proposals by price as follows:

Offeror	Price	Ranking
ISS	\$8,663,000	1
Offeror A	\$8,897,434	2
GSZ	\$8,964,548	3
Offeror B	\$9,062,039	4
Offeror C	\$9,086,272	5
Offeror D	\$11,600,000	6

Id. Relevant here, the VA determined GSZ's proposed price to be \$8,964,548 because GSZ identified this price as its "offer" in three separate places in its price proposal. AR at 7 (citing AR, Tab B, GSZ's Price Proposal, at 3, 4, 5).

Specifically, GSZ listed this price as its “Base Offer” on the Standard Form (SF) 1442 (“Offer”). AR, Tab B, GSZ’s Price Proposal, at 3. It then reiterated this same price in its Schedule 1.1, and again as the total of a detailed breakdown of 25 separate cost components. Id. at 4-5.

In its price proposal, GSZ also included a letter, addressed to the contracting officer, in which GSZ discussed a potential reduction of its proposed price by \$450,000 if certain changes were made to the RFP. Id. at 7. GSZ labeled the letter a “voluntary alternate,” but did not cite a specific provision in the RFP that permitted the submission of such an alternative. Id. Notwithstanding GSZ’s “voluntary alternate,” the VA determined GSZ’s proposed price for the procurement to be \$8,964,548, based on numerous references to this amount in its proposal. AR, Tab B, Abstract of Offers, at 21.

After ranking the proposals by price, the VA evaluated only the lowest-priced offeror, i.e., ISS, for technical acceptability.¹ The VA determined that ISS’s proposal was “acceptable” under all four evaluation factors, and awarded the contract to ISS on September 24. AR, Tab M, Evaluation of ISS’s Proposal, at 28; Tab B, Award Notice, at 23. This protest followed on October 2.

Initial Protest and VA Requests for Dismissal

In its initial protest, GSZ raised two primary arguments. First, GSZ argued that ISS’s proposal, “on its face,” should have led the VA to conclude that ISS did not intend to comply with the subcontracting limitations set forth in VAAR clause 852.219-10(c)(3). Protest at 2-4. Second, GSZ argued that it submitted the lowest-priced, technically acceptable proposal and, therefore, should have received the award. Id. at 3.

On October 5, the VA requested dismissal of GSZ’s protest as legally insufficient pursuant to our Bid Protest Regulations at 4 C.F.R. § 21.5(f). Agency’s 1st Request for Dismissal (Oct. 5, 2015) at 2. The VA’s request, however, only addressed GSZ’s first protest ground. On October 9, the VA filed a second request for dismissal, reiterating its arguments with respect to the GSZ’s first protest ground and requesting dismissal of GSZ’s second protest ground. The VA argued--without submitting a copy of the RFP--that the RFP did not permit alternate proposals and, therefore, that the VA was under no obligation to consider GSZ’s “voluntary alternate” price. Agency’s 2d Request for Dismissal (Oct. 9, 2015) at 3-4.

¹ Although the record does not evidence the sequential process the VA employed to evaluate proposals, agency counsel represented that the VA first ranked proposals by price and then evaluated the technical acceptability of the lowest-priced proposal only. Agency Email (Nov. 6, 2015, 2:55 p.m.).

Because GSZ was not the lowest-priced offeror, the VA argued that GSZ was not an interested party. Id. at 4.

In response, GSZ argued, among other things, that its protest contained a sufficiently detailed statement of the grounds supporting its allegations and that the solicitation permitted the submission of alternate proposals. GSZ's Response to Agency's Requests for Dismissal (Oct. 21, 2015) at 6-8, 11. Specifically, GSZ alleged that alternate proposals were permitted pursuant to the RFP's Value Engineering--Construction clause, Federal Acquisition Regulation (FAR) clause 52.248-3; the Notice of Buy American Requirement--Construction Materials clause, FAR clause 52.225-10; and the Special Notes clause, VAAR clause 852.236-89. Id. at 6-8 (citing RFP at 55, 36, 68). Like the VA, GSZ did not submit a copy of the RFP.

On October 26, our Office denied the VA's requests for dismissal, concluding that GSZ's protest stated valid bases of protest. We also noted that, despite the parties' various claims regarding the terms of the RFP, our Office was not provided a copy of the RFP and could not independently assess the parties' claims regarding what were essentially merits-based issues, i.e. whether the VA properly evaluated GSZ's price in accordance with the terms of the RFP. Regardless, we noted that, even if the VA properly evaluated GSZ's price, such that GSZ was not the lowest-priced offeror, GSZ was still an interested party because it had challenged the technical acceptability of ISS's proposal. See e.g., Protect the Force, Inc., B-411897.2, B-411987.4, Nov. 24, 2015, 2015 CPD ¶ 369 at 5.

On October 28, the VA filed further comments regarding its two requests for dismissal. Among other things, the VA argued--for the first time--that GSZ was not an interested party because "there is another lower priced offeror that would be in line for award before the protester." VA's Response to GAO's Denial (Oct. 28, 2015) at 2. We declined to address this new ground for dismissal, and stated that the agency report remained due on November 2.²

VA's First Notice of Corrective Action

On November 2, in lieu of filing the agency report, the VA submitted a notice of corrective action, in which the VA proposed to request a Certificate of Competency (COC) for ISS from the Small Business Administration (SBA). In the event the SBA declined to issue a COC to ISS, the VA represented it would "make an award to [Offeror A] as the next lowest priced, technically acceptable offeror."

² In any event, we concluded that the VA's new ground for dismissal did not provide a basis to dismiss GSZ's protest because GSZ had alleged that, if accepted, its "voluntary alternate" price would render its proposal the lowest-priced.

VA's 1st Notice of Corrective Action (Nov. 2, 2015). The VA sought dismissal of the protest on the grounds that GSZ had received the relief it sought.

That same day, our Office asked the VA clarify two aspects of its proposed corrective action. First, we asked the VA to indicate the status of the award during the pendency of its proposed corrective action. Second, we asked the VA to explain how its proposed action addressed GSZ's challenge to the VA's price evaluation.

Instead of responding to our request for clarification, the VA submitted its agency report on November 4. In its report, which addressed the merits of GSZ's protest grounds, the VA also renewed its argument that GSZ was not an interested party because it was not next-in-line for award. AR at 11 ("[T]here is yet another offeror that is the second lowest priced, technically acceptable[.]").

On November 6, our Office convened a conference call with the parties to discuss numerous objections raised by GSZ regarding the contents of the agency report. Importantly, during the conference call and later via email, agency counsel represented--for the first time--that the VA did not evaluate the technical acceptability of any proposal other than ISS's proposal. Agency Email (Nov. 6, 2015, 2:55 p.m.). Thus, Offeror A could not be considered next-in-line for award--a fact that the VA subsequently conceded. See Agency Email (Nov. 10, 2015, 2:02 p.m.). The VA ultimately withdrew its argument that GSZ was not an interested party. Id. ("[T]he Agency concedes the Interested Party argument ONLY that was averred in the Agency's AR filed on Wednesday, November 4.") (referencing AR at 11).

GSZ's First Supplemental Protest

On November 12, GSZ filed a supplemental protest (B-412219.2), challenging the VA's notice of corrective action. GSZ contended that any award to Offeror A would be improper because the VA had not evaluated Offeror A's technical proposal and because GSZ's proposed "voluntary alternate" price, if accepted, would render its proposal the lowest-priced.³ First Supp. Protest (Nov. 12, 2015) at 4.

Although we understood that the VA had effectively abandoned its stated intent to take corrective action by filing the agency report, in light of GSZ's supplemental protest, on November 12, our Office expressly denied the VA's request for dismissal

³ Although GSZ recognized, in its supplemental protest, that the VA had conceded its interested party argument, GSZ viewed the VA's concession as applicable to arguments made in the agency report only, not to the VA's corrective action. First Supp. Protest (Nov. 12, 2015) at 2.

based on its proposed corrective action, which rendered GSZ's supplemental protest academic.

GSZ's Second Supplemental Protest and VA's Second Notice of Corrective Action

On November 16, GSZ filed a second supplemental protest (B-412219.3), alleging that ISS's proposal was technically unacceptable because it did not meet the RFP's requirements regarding relevant experience under the construction management and past performance evaluation factors. Second Supp. Protest (Nov. 12, 2015) at 3. Among other things, GSZ asserted that ISS submitted past performance questionnaires for projects not completed by ISS, but by its proposed subcontractor. Id. at 3-4.

In response, on November 19, the VA filed a second notice of corrective action, conceding that at least one of the projects submitted by ISS to establish its experience "cannot be counted," that ISS's proposal was "technically unacceptable," and that ISS was "ineligible for award." Agency's 2d Notice of Corrective Action (Nov. 19, 2015, 10:16 a.m.). The VA proposed to terminate the award to ISS and, once again ignoring GSZ's repeated contentions that the VA misevaluated its price, to evaluate the proposal of Offeror A for technical acceptability because Offeror A is the "next lowest priced offeror." Id.

Before our Office took any action, the VA retracted its notice and stated that it would submit a supplemental agency report instead. Agency Email (Nov. 19, 2015, 4:23 p.m.). Therefore, our Office set a briefing schedule for GSZ's second supplemental protest, which required the supplemental agency report to be filed on November 23, and the protester and intervenor's comments to be filed on November 30. The agency provided its report on the supplemental protest, arguing that ISS's proposal was technically acceptable because the RFP did not bar consideration of the experience of an offeror's proposed subcontractor. Supp. AR at 11.

On November 30, at 6:04 p.m., GSZ requested an extension of time until close of business on December 1 to file its comments. GSZ Request for Extension of Time (Nov. 30, 2015, 6:04 p.m.). Our Office responded that the filing of the request at 6:04 p.m. had occurred after the 5:30 p.m. close of business that day, per our regulations at 4 C.F.R. 21.0(f). We further advised that GSZ could file its comments on December 1, if it chose, but that our Office would not guarantee that its comments would be considered timely filed.

DISCUSSION

After the numerous requests for dismissal and supplemental protests, described above, three allegations remain pending in GSZ's protest: (1) ISS's proposal, on its face, should have led the VA to conclude that the awardee did not intend to comply with the subcontracting limitations set forth in VAAR clause 852.219-10(c)(3);

(2) the VA failed to accept GSZ's "voluntary alternate" price, which GSZ contends would have made its proposal the lowest-priced; and (3) ISS did not meet the RFP's requirements regarding relevant experience. For the reasons discussed below, we find no basis to sustain the protest.⁴

Compliance with Subcontracting Limitations

GSZ contends that ISS will not comply with the subcontracting limitation in VAAR clause 852.219-10, arguing that it is "impossible" for ISS to spend 15 percent of the cost of the contract performance on its own employees because ISS's proposal lists only four ISS employees in the "key personnel" portion of its technical proposal. Protest at 3-4; Protester's Comments (Nov. 20, 2015) at 6, 8. GSZ contends that ISS would need to spend at least \$1,299,450 on those four employees, resulting in an hourly rate that is not sustainable in the construction industry.⁵ Protester's Comments (Nov. 20, 2015) at 6. We find no merit to this argument.

As a general matter, an agency's judgment as to whether a small business offeror will comply with the subcontracting limitation clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration. Raloid Corp., B-297176, Nov. 10, 2005, 2005 CPD ¶ 205 at 4; Ecompex, Inc., B-292865.4, et al., June 18, 2004, 2004 CPD ¶ 149 at 5. Neither issue is one that our Office

⁴ GSZ raises other collateral issues. Although our decision does not specifically address every argument, we have considered all of the protester's arguments and find that none provides a basis to sustain the protest. For example, GSZ alleges that ISS's proposal was technically unacceptable because ISS failed to provide a subcontracting plan. Protest at 3; Protester's Comments (Nov. 20, 2015) at 8-9. The RFP, however, did not require the submission of a subcontracting plan. This is because the RFP was issued as a SDVOSB set-aside. RFP at 3. Both the FAR and VAAR expressly exempt acquisitions that are set aside or are to be accomplished under the SBA's section 8(a) program from the requirement to submit a subcontracting plan. FAR § 19.708(b)(1); VAAR clause 852.219-9(a), § 819.709.

⁵ GSZ states that this figure represents 15 percent of ISS's total evaluated price, i.e., \$8,663,000 multiplied by 0.15. GSZ's calculation, however, is flawed because the clause does not require a concern to expend 15 percent of its total price on its employees or those of other SDVOSB concerns. Rather, the clause requires that a concern expend at least 15 percent of the cost incurred for personnel on its employees or the employees of other SDVOSB concerns. VAAR clause 852.219-10(c)(3). In order to determine the exact dollar amount ISS would be required to spend to satisfy the clause, the awardee would have had to identify its proposed personnel costs--which it did not do. See AR, Tab I, ISS's Price Proposal, at 4. Although, as noted above, information concerning labor costs was required by the RFP, see RFP at 3, GSZ did not challenge this aspect of the VA's evaluation.

generally reviews. See 4 C.F.R. § 21.5(a), (c). However, as our Office has consistently held, where a proposal, on its face, should lead an agency to conclude that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of proposal's acceptability. Sealift, Inc., B-409001, Jan. 6, 2014, 2014 CPD ¶ 22 at 4; MindPoint Grp., LLC, B-409562, May 8, 2014, 2014 CPD ¶ 145 at 2; TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5, 6. This is because the limitation on subcontracting is a material term of the solicitation, and a proposal that fails to conform to a material term or condition of a solicitation is unacceptable and may not form the basis for an award. Addx Corp., B-404888, May 4, 2011, 2011 CPD ¶ 89 at 3-4.

The VA did not directly address GSZ's argument. Instead, in its report responding to the protest, the VA submitted a size determination issued by the SBA for ISS in connection with a different procurement. AR, Tab J, SBA Size Determination No. 04-2015-058. The agency argued that GSZ's protest should be denied because the "SBA recently affirmed ISS as a small business" and found that ISS "is not unusually reliant on its subcontractors to complete the work required." AR at 5. We conclude, however, that the SBA's size determination is not relevant to GSZ's arguments here because it pertains to an entirely different procurement, which was issued under a different North American Industry Classification System code, with a different corresponding size standard, and which had a different statement of work. See 13 C.F.R. § 121.1007 (stating that a protest of size status, and thus the resulting formal size determination, must relate to a particular procurement). The SBA's size determination is also not relevant because it does not address GSZ's arguments here, which pertain to the technical acceptability of ISS's proposal, not its status as a small business concern.⁶

Although the VA did not directly respond to GSZ's arguments, we conclude that nothing on the face of ISS's proposal should have led the VA to conclude that ISS would not comply with the subcontracting limitation. First, contrary to GSZ's allegations, an offeror's number of employees, without more, does not establish that the offeror takes exception to the subcontracting limitation. See Reliable Builders, Inc., B-402652, B-402652.3, June 28, 2010, 2010 CPD ¶ 260 at 4, 5 (allegations that a firm lacks office space, licenses, and staff does not provide a basis for finding that the firm takes exception to the subcontracting clause in its proposal); Raloid

⁶ The VA further contends that the SBA's size determination "in effect achieves the Agency's previously notified propose[d] Corrective Action against ISS in the form of requesting a Certificate of Competency (COC)." AR at 5; id. at 6 (contending that "SBA has in effect already established ISS as a responsible offeror in its recent size/status determination of ISS."). The VA's argument conflates a size determination, which evaluates whether the concern is small for a specific procurement, with the COC program, which evaluates whether the concern possesses the responsibility to perform a specific government contract.

Corp., supra, at 4 (allegations that an offeror does not have adequate facilities, equipment, or employees to perform the contract does not provide evidence that the firm cannot or will not comply with the subcontracting clause). See also KAES Enter., LLC, B-408366, Aug. 7, 2013, 2013 CPD ¶ 192 at 2-3 (protest alleging that awardee's employees could perform only 27 percent, not the 51 percent required by the subcontracting clause, is denied where there was nothing on the face of the proposal to indicate the awardee would not comply with the clause).

Moreover, although ISS's proposal lists four "key personnel," by name, as required by the RFP, there is no indication in the proposal that those four individuals comprise the entirety of ISS's workforce on the project or that ISS would not hire additional personnel as needed to complete the project or to comply with the subcontracting limitations. In this regard, the awardee's proposal states that, as the prime contractor, "ISS will have overall responsibility for the operation, quality, safety, and outcome of the project and will self-perform general construction work on the project." AR, Tab I, ISS's Technical Proposal, at 2. The proposal also states that ISS will self-perform pipefitting, demolition, and mechanical supply. Id. at 6.

ISS's proposal states that the remainder of the work will be performed by one of its three subcontractors. Id. Notably, ISS's team includes a subcontractor that is also an SDVOSB, who will perform all electrical construction, electrical trades, and fire alarm installation. Id. at 2, 5, 6. Thus, because the subcontracting limitation clause expressly allows an SDVOSB concern to rely upon "the employees of other eligible [SDVOSB] concerns" in order to satisfy the 15 percent limitation, VAAR clause 852.219-10(c)(3), we find that ISS's proposal, on its face, did not furnish any basis for finding that it took exception to the clause.

Evaluation of GSZ's Price

Next, GSZ argues that the VA failed to consider its "voluntary alternate" price, which, if accepted, would have reduced its price by \$450,000. GSZ Response to Agency's Requests for Dismissal (Oct. 21, 2015) at 8. Thus, GSZ contends that its "voluntary alternate" price rendered its proposal the lowest-priced. Id.

The VA correctly notes, however, that the RFP did not include any provisions authorizing alternate proposals, such as FAR clause 52.215(c)(9) (Alternate II). See also FAR § 15.209(a)(2) (instructing contracting officers to include this clause if the government is willing to accept alternate proposals). Thus, the VA asserts that it was not required to evaluate or accept GSZ's "voluntary alternate" price.

In its protest submissions, GSZ responds that its "voluntary alternate" represents, alternatively, (1) a value engineering change proposal (VECP) submitted pursuant to the Value Engineering--Construction clause, FAR clause 52.248-3; (2) a request for an exception to the Buy American clause, FAR clause 52.225-10; or (3) a request to use optional materials pursuant to the Special Notes clause, VAAR

clause 852.236-91. See GSZ Response to Agency's Requests for Dismissal (Oct. 21, 2015) at 6-8. For the reasons discussed below, we conclude that the record does not support GSZ's contentions.

First, the record here does not demonstrate that GSZ intended its "voluntary alternate" to be a VECP. Value engineering, which is governed by FAR part 48, is a mechanism by which contractors may voluntarily suggest methods for performing contracts more economically. FAR § 48.101(a), clause 52.248-3(a), (b). If the government accepts the VECP, the contractor is entitled to a share of the savings under the contract. FAR §§ 48.102(b), 48.104, clause 52.248-3(f). The contractor's share is determined by subtracting government costs from the savings and multiplying the result by 45 percent.⁷ FAR § 48.103(f)(1)(i).

Here, GSZ's proposal was not identified or labeled as a VECP. Moreover, GSZ's "voluntary alternate" did not contain the substantive information required by the clause and there is no evidence that it was submitted in the manner required by the clause. FAR clause 52.248-3(c), (d). In any event, even assuming that GSZ intended its "voluntary alternate" to be a VECP, the RFP did not require the submission of a VECP or provide that the VA would evaluate VECPs as part of its price evaluation. Thus, the VA was under no duty to consider GSZ's alleged VECP prior to award.⁸ Tri-Cities Tool, Inc., B-238377, Apr. 18, 1990, 90-1 CPD ¶ 401 at 5 (If not required by the solicitation, an agency's failure to consider a VECP "has no relevance to the evaluation . . . or the award decision."); Mech EI Inc., B-233092, Feb. 21, 1989, 89-1 CPD ¶ 175 at 1 (an agency is under no duty to consider VECPs prior to award). Moreover, the decision to accept or reject a VECP is a "unilateral decision[]" made solely at the discretion of the Government." FAR § 48.103(c)(1).

⁷ For this reason, it is not a foregone conclusion that acceptance of GSZ's alleged VECP would have rendered its proposal the lowest-priced.

⁸ Indeed, our Office has held that it would be improper for an agency to consider a VECP altering the RFP's requirements in the evaluation of a response to an RFP without providing all competitively qualified offerors a similar opportunity to submit offers proposing alterations to the requirements of the RFP. Dan-D, Inc. & Fluidaire Equip. Co., Inc., JV, B-225404, B-225404.2, Feb. 17, 1987, 87-1 CPD ¶ 174 at 3. Rather, "[v]alue engineering incentive clauses are placed in contracts to provide authority for permissive approved deviations from specifications, etc., after contract award to an offeror which was otherwise responsive to the requirements of the solicitation." Id. For this reason, any allegation that an agency should have accepted a VECP is a matter of contract administration, which our Office does not review. 4 C.F.R. § 21.5(a); MTU of N. Am., Inc., B-238785.2, Mar. 19, 1990, 90-1 CPD ¶ 308 at 2 ("[A] protest concerning an agency's acceptance of a VECP under a contract is not for resolution under our Bid Protest Regulations since it involves a matter of contract administration.").

Second, the record does not support GSZ's claim that its "voluntary alternate" was intended to be a request for an exception to the Buy American clause, FAR clause 52.225-10. In this regard, GSZ's proposal already included such a request. In a separate letter addressed to the contracting officer, GSZ states, "[a]s per Section 2.8 52.225-10 Notice of Buy American Requirement--Construction Materials, this serves as a request for an exception to the requirements of the Buy American statute[.]" AR, Tab B, GSZ's Price Proposal, at 6. The request identified in GSZ's proposal did not set forth the alternate price that the protester argues should have been considered. Id. Regardless, an alternate proposal submitted as a request for an exception to the Buy American clause requires a separate SF 1442, FAR clause 52.225-10(d)(2), which GSZ did not submit.

Third, GSZ's reliance on the Special Notes clause, VAAR clause 852.236-91, is unhelpful because this clause does not permit the submission of alternative proposals. Instead, the portion of the clause quoted by GSZ provides that "[w]here the use of optional materials or construction is permitted, the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected." GSZ Response to Agency's Requests for Dismissal (Oct. 21, 2015) at 8 (quoting VAAR clause 852.236-91(b)). For these reasons, we find that the agency was not required to evaluate GSZ's "voluntary alternate" price.

Evaluation of ISS's Experience

Finally, GSZ's second supplemental protest (B-412219.3) alleged that ISS's proposal was technically unacceptable because it did not meet the RFP's requirements regarding relevant experience. Second Supp. Protest (Nov. 12, 2015) at 3. We dismiss GSZ's supplemental protest because GSZ failed to timely file comments in support of its protest.

Our Bid Protest Regulations require that comments on an agency report be filed within 10 days, unless our Office establishes a shorter time period, and further state that a protest shall be dismissed if the applicable deadline is not met. 4 C.F.R. § 21.3(i); All Native, Inc., B-411693 et al., Oct. 5, 2015, 2015 CPD ¶ 337 at 5 (dismissing supplemental protest where comments were not filed within time established by GAO). As explained above, the VA filed a supplemental report responding to the protester's argument challenging the evaluation of ISS's experience. GSZ, however, did not file its comments on the supplemental agency report by the November 30 deadline set by our Office. Although GSZ requested an extension of time within which to file its comments, its request was submitted after 5:30 p.m. on November 30, meaning that the deadline had expired. Our regulations

do not provide for extensions of time after the deadline has passed. Accordingly, GSZ's supplemental protest is dismissed.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel