



Decision

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Matter of: STG, Inc.--Costs

File: B-414265.8

Date: July 7, 2017

Joseph P. Hornyak, Esq., Gregory R. Hallmark, Esq., and Elizabeth N. Jochum, Esq., Holland & Knight LLP, for the protester.

Lieutenant Colonel Kevin P. Stiens and Alexis J. Bernstein, Esq., Department of the Air Force, for the agency.

Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's request that GAO recommend reimbursement of protest costs is dismissed in part as academic where the agency does not dispute the protester's request with regard to certain clearly meritorious protest grounds, and denied in part with regard to one protest ground that was not clearly meritorious and was severable from the protester's meritorious challenges.

DECISION

STG, Inc., of Reston, Virginia, requests that we recommend that the firm be reimbursed the costs of filing and pursuing its protest of the issuance of a task order to THE CENTECH GROUP, Inc., of Falls Church, Virginia, by the Department of the Air Force under request for proposals (RFP) No. FA4610-15-R-0007 for information technology (IT) services for the Joint Space Operations Center.

We dismiss in part, and deny in part.

BACKGROUND

The RFP was issued on January 4, 2016, seeking proposals for the issuance of a task order under the Air Force's Network-Centric Solutions (NETCENTS) II small business multiple-award contract program to provide services supporting continuing IT infrastructure maintenance and sustainment of the Joint Space Operations Center, as well as IT systems required by the Fourteenth Air Force and Joint Functional Component Command for Space at Vandenberg Air Force Base. The RFP anticipated

the issuance of a task order with fixed-price and cost-plus-fixed-fee contract line item numbers.

On December 29, the agency issued the task order to CENTECH. On January 6, 2017, STG filed a protest of the award to CENTECH.¹ STG primarily argued that the Air Force applied unstated evaluation criteria in assigning strengths to CENTECH under the staffing plan subfactor, when such strengths were unrelated to CENTECH's staffing approach. Additionally, the protester challenged other areas of the agency's technical evaluation, for instance, alleging that the agency should have credited STG with two additional strengths under the staffing plan subfactor. STG further argued that the Air Force failed to engage in meaningful discussions and that the agency conducted a flawed best-value tradeoff determination.

On March 8, 2017, the GAO attorney assigned to this protest conducted an "outcome prediction" alternative dispute resolution (ADR) teleconference with the protest parties. During the call, the GAO attorney advised that our Office was likely to sustain the protest on the basis that the agency had applied unstated evaluation criteria in crediting CENTECH's proposal with strengths under the staffing plan factor. In the view of the GAO attorney, this error led to a flawed best-value determination.² With regard to STG's argument that its proposal should have been credited with two additional strengths, however, the GAO attorney conducting the ADR noted that this argument had not been pursued in STG's comments responding to the agency report, and was therefore considered to have been abandoned.

On March 13, the agency notified our Office of its intention to take corrective action by amending the solicitation, getting revised proposals, and making a new best-value determination. We subsequently dismissed the protest as academic. Following the dismissal, STG filed the instant request for a recommendation that it be reimbursed the costs associated with filing and pursuing its protest.

DISCUSSION

When a procuring agency takes corrective action in response to a protest, our Office may recommend under 4 C.F.R. § 21.8(e) that the agency reimburse the protester its

¹ The awarded value of the task order at issue here exceeded \$25 million. Accordingly, this procurement was within our jurisdiction to hear protests related to the issuance of orders under Department of Defense multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e).

² The GAO attorney conducting the ADR additionally found that the source selection authority unreasonably equated a strength in STG's proposal pertaining to staffing certifications to a strength in CENTECH's proposal for staffing certifications. The GAO attorney concluded that these strengths were not reasonably considered to be equivalent.

reasonable protest costs where, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing protesters to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Pemco Aeroplex, Inc.--Recon. & Costs, B-275587.5, B-275587.6, Oct. 14, 1997, 97-2 CPD ¶ 102 at 5. A protest is clearly meritorious when a reasonable agency inquiry into the protest allegations would show facts disclosing the absence of a defensible legal position. The Real Estate Ctr.--Costs, B-274081.7, Mar. 30, 1998, 98-1 CPD ¶ 105 at 3. A GAO attorney will inform the parties through outcome prediction ADR that a protest is likely to be sustained only if he or she has a high degree of confidence regarding the outcome; therefore, the willingness to do so is generally an indication that the protest is viewed as clearly meritorious, and satisfies the “clearly meritorious” requirement for the purpose of recommending reimbursement of protest costs. National Opinion Research Ctr.--Costs, B-289044.3, Mar. 6, 2002, 2002 CPD ¶ 55 at 3.

The Air Force disputes STG’s request that its protest costs be reimbursed only with respect to one argument: that the agency should have assigned two additional strengths to STG under the staffing plan subfactor. Agency Resp. to Request for Costs at 1-2. Because the Air Force does not dispute STG’s request that its protest costs be reimbursed with regard to any of the remaining protest arguments, we dismiss as academic the protester’s request for a recommendation pertaining to these arguments.³ With regard to STG’s remaining argument, that it should have been assigned additional strengths under the staffing plan factor, we note that STG originally raised this argument in a supplemental protest filing made on January 9, and that the agency responded and contested this argument in its February 6 agency report. STG, however, failed to respond to the agency’s arguments in their subsequent comments. Because we consider this argument to be abandoned, we do not find it clearly meritorious. See Sabel Sys. Tech. Solutions, LLC--Costs, B-410537.3, Aug. 12, 2015, 2015 CPD ¶ 254 at 6 n.6.

Our Office generally recommends that a successful protester be reimbursed the costs incurred with respect to all the issues pursued, not merely those upon which it has prevailed. The Salvation Army Cmty. Corrs. 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 determining whether protest issues

³ As the agency does not contest the protester’s request for a recommendation that it be reimbursed its protest costs, with respect to the remaining protest arguments, we recommend that STG coordinate with the agency on the submission of a claim for costs covering these protest grounds. Should the agency and the protester be unable to reach an ultimate agreement on the claim for costs, the protester may request that our Office issue a decision resolving the matter. See 4 C.F.R. § 21.8(e), (f).

are so clearly severable as to constitute essentially separate protests, our Office considers, among other things, whether the successful and unsuccessful arguments share a common core set of facts, are based on related legal theories, or are otherwise not readily severable. Id.

Here, we find STG's challenge to the evaluation of its staffing approach to be severable from its meritorious protest challenges. In this regard, STG's meritorious arguments related to the agency's application of unstated evaluation criteria in assigning CENTECH's proposal strengths under the staffing plan factor, and the agency's unreasonable equating of strengths in the two proposals pertaining to staffing certifications. STG's challenge to the evaluation of its own proposal is unrelated to either of these arguments. Further, this argument was addressed and treated by STG in a separate manner from its meritorious protest challenges, with the protester raising the challenge in a separate, stand-alone protest filing and then later abandoning the argument after the agency submitted its agency report. Because this argument is based on a legal theory and a core set of facts different from the protester's meritorious arguments, we find it to be sufficiently separate as to be clearly severable.

The request is dismissed in part and denied in part.

Susan A. Poling
General Counsel