



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: Booz Allen Hamilton, Inc.

File: B-414822.5

Date: October 13, 2017

Kara M. Sacilotto, Esq., Tracye Winfrey Howard, Esq., Craig Smith, Esq., Moshe B. Broder, Esq., and Colin J. Cloherty, Esq., Wiley Rein LLP, for the protester. Gregory R. Hallmark, Esq., David S. Black, Esq., Elizabeth N. Jochum, Esq., and Rodney M. Perry, Esq., Holland & Knight LLP, for Raytheon Company, the intervenor. Andrew Sinn, Esq., and Jaron Chriss, Esq., General Services Administration, for the agency.

Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's corrective action in response to an earlier protest is dismissed where the corrective action rendered the earlier protest academic and where the challenge is otherwise premature.

DECISION

Booz Allen Hamilton, Inc. (BAH), of McLean, Virginia, challenges the terms of the corrective action undertaken by the General Services Administration (GSA) in response to BAH's protest (B-414822, B-414822.2, B-414822.3) of the issuance of a task order to Raytheon Intelligence, Information & Services, of Dulles, Virginia, under solicitation No. ID04160057 for services in support of the Army Research, Development and Engineering Command, Software Engineering Directorate. The protester contends that the agency's corrective action does not commit the agency to correct any alleged errors in the prior evaluation or award decision.

We dismiss the protest because it fails to state a valid basis and is otherwise premature.

BAH filed its initial protest on June 19, 2017, arguing that the award to Raytheon was improper; the protester also filed two supplemental protests. The protester raised the following three primary arguments: (1) Raytheon had an unmitigatable impaired objectivity organizational conflict of interest (OCI) that should have disqualified it from

award; (2) the agency unreasonably evaluated the offerors' technical proposals, and (3) the agency unreasonably evaluated the realism of BAH's proposed costs.

On August 30, at the request of GSA, the GAO attorney assigned to the protest conducted an outcome prediction alternative dispute resolution (ADR) conference.¹ The GAO attorney advised that he would likely draft a decision sustaining the protest concerning the protester's allegations regarding OCIs and the technical evaluation.

On September 1, GSA advised that it would take corrective action in response to the protest. Specifically, the agency stated that it would take the following actions:

GSA intends to review the scope of its analysis of Organizational Conflicts of Interest (OCI) and correct and/or supplement that analysis and/or take other action as it deems necessary to ensure the OCI analysis sufficiently addresses the impaired objectivity OCI concerns or otherwise satisfies the Federal Acquisition Regulation subpart 9.5. GSA also intends to review the evaluation record with respect to OCIs and Raytheon's proposal and Oral Question and Answers (Oral Q&A), and with respect to both Raytheon and BAH proposals regarding Oral Q&A 18, to ensure they were evaluated in accordance with the stated evaluation criteria and perform re-evaluation(s) as it deems appropriate. Based on the corrective action results, GSA will make any required adjustments to the Quality Infused Pricing values and/or the determination of the offeror representing the best value.

Agency Notice of Corrective Action, Sept. 1, 2017, at 1.

On September 8, our Office dismissed the protest, concluding that the agency's proposed corrective action rendered the protest academic. In the decision, we noted that the protester objected to the dismissal of the protest, arguing that the agency's proposed corrective action did not provide adequate details and does not commit the agency to resolve the issues raised by the protester. Protester's Objection to Corrective Action, Sept. 6, 2017, at 2-3. Our decision advised that "[t]o the extent the protester is dissatisfied with the results of the agency's corrective action, it may file a protest consistent with our Bid Protest Regulations, 4 C.F.R. part 21." Booz Allen Hamilton, Inc., B-414822 et al., Sept. 8, 2017, at 2 (unpublished decision).

On September 11, BAH filed this protest challenging the terms of the corrective action.

¹ In an outcome prediction ADR conference, the GAO attorney assigned to the protest will inform the parties as to his or her views regarding whether the protest is likely to be sustained or denied. Bid Protest Regulations, 4 C.F.R. § 21.10(e); see First Coast Serv. Options, Inc., B-409295.4, B-409295.5, Jan. 8, 2015, 2015 CPD ¶ 33 at 3. The purpose of such outcome prediction conferences is to facilitate the resolution of a protest without a formal decision on the merits by our Office. Id.

BAH contends, in essence, that GSA's proposed corrective action can be interpreted in a manner that allows the agency to not undertake corrective action that addresses the protester's concerns regarding OCIs and the technical evaluation.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Cybermedia Techs., Inc., B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. MSC Indus. Direct Co., Inc., B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; Bannum Inc.--Protest & Recon., B-411074.2, B-411074.3, June 12, 2015, 2015 CPD ¶ 231 at 3. An agency's corrective action need not address every protest issue, but must render the protest academic by granting the requested relief. SOS Int'l, Ltd., B-407778.2, Jan. 9, 2013, 2013 CPD ¶ 28 at 2-3. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. DGC Int'l, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; Northrop Grumman Info. Tech., Inc., B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3.

As discussed above, we concluded that that the proposed corrective action rendered the protest academic because it provided for a reevaluation of two areas of the evaluation and anticipated the possibility of a new award decision. See Best Foam Fabricators, Inc., B-274803, Oct. 28, 1996, 97-1 CPD ¶ 152 at 1 (protest is rendered academic where the protester will be eligible for award in the agency's corrective action). We find that none of the protester's arguments here provides a basis to conclude that the agency's proposed corrective action failed to render the protest academic. For this reason, we conclude that the protest fails to state a valid basis.

BAH cites the following statements in the agency's notice of proposed corrective action in support of its protest:

GSA intends to review the scope of its analysis of [OCIs] and correct and/or supplement that analysis and/or take other action as it deems necessary . . . GSA also intends to review the evaluation record with respect to OCIs and Raytheon's proposal and Oral Question and Answers (Oral Q&A), and with respect to both Raytheon and BAH proposals regarding Oral Q&A 18, to ensure they were evaluated in accordance with

the stated evaluation criteria and perform re-evaluation(s) as it deems appropriate.

Protester's Response to Request for Dismissal, Sept. 22, 2017, at 2-3 (quoting Agency Notice of Corrective Action, Sept. 1, 2017, at 1 (emphasis added)). BAH argues that the agency's proposed corrective action "is not committing to any reevaluation of Raytheon's impaired objectivity," and is an "illusory promise" to evaluate the offerors' technical proposals. Id. at 2-3 (emphasis in original).

To the extent BAH contends that the GSA description of its proposed corrective action provides that the agency may simply refuse to take any action to address the protest allegations, we do not agree with the protester. In this regard, government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on inference, supposition or unsupported speculation. BAE Sys. Tech. Solutions & Servs., Inc., B-409914, B-409914.2, Sept. 16, 2014, 2014 CPD ¶ 322 at 11.

Here, we do not interpret GSA's statement that it may take "other action as it deems necessary" to mean that the agency could elect to utterly ignore the OCI and technical evaluation issues identified in the agency's notice. Additionally, to the extent BAH is concerned that the agency's "review" of the evaluation record might affirm the award to Raytheon, such is the case with all proposed corrective actions. As we advised in our decision dismissing the protest, BAH may file a subsequent protest if it is dissatisfied with the results of the corrective action, consistent with our Bid Protest Regulations. Booz Allen Hamilton, Inc., supra, at 2.

Finally, we conclude that the protester's arguments here concerning the corrective action merely anticipate adverse actions by the agency, and are thus premature. Our Office assumes that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and we will not consider a protest allegation which speculates that an agency will not evaluate proposals in the manner set forth in the solicitation. Hewlett Packard Enter. Co., B-413444.4, B-413444.5, Jan. 18, 2017, 2017 CPD ¶ 29 at 5.

The protest is dismissed.

Susan A. Poling
General Counsel