



# Decision

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**Matter of:** Abacus Technology Corporation--Costs

**File:** B-416390.6

**Date:** September 27, 2019

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## DIGEST

GAO recommends partial reimbursement of protest costs where the record shows that the agency unduly delayed taking corrective action in response to a clearly meritorious challenge to the agency's cost realism analysis; reimbursement is not recommended with regard to other grounds where the record shows that the grounds were independent and therefore severable from the protester's clearly meritorious ground, and were not themselves clearly meritorious.

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## DECISION

Abacus Technology Corporation (Abacus), of Chevy Chase, Maryland, requests that our Office recommend that it be reimbursed the reasonable costs of filing and pursuing its protest challenging the issuance of a task order to Salient CRGT, Inc. (Salient), of Fairfax, Virginia, under request for proposals (RFP) No. HSSCCG-17-R-00010, issued by the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) for information technology services. Abacus argues that its protest was clearly meritorious and that the agency unduly delayed taking corrective action.

We grant the request in part and deny it in part.

## BACKGROUND

On June 27, 2017, USCIS issued the solicitation under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5 to firms holding DHS Enterprise Acquisition Gateway for Leading-Edge Solutions (EAGLE) II indefinite-delivery, indefinite-quantity

contracts. RFP at 1;<sup>1</sup> First Contracting Officers' Statement (COS), Jan. 2, 2019, at 2. The solicitation contemplated the award of a task order, referred to as the National Area and Transnational Information Technology Operations and Next-Generation Support Services (NATIONS II) task order, to fulfill a requirement of USCIS's Office of Information Technology to provide a broad range of information technology support services to agency end users. RFP at 1, 22. Specifically, the performance work statement required the contractor to provide service desk support, field services, service center services, account management services, hardware incident resolution, and continuity of operations coordination. Id. at 22-23.

The solicitation anticipated the award of a hybrid fixed-price-award-fee, cost-plus-award-fee, and cost-reimbursement task order with a period of performance of a base year followed by up to three option years. Id. at 1, 3, 13. Award would be made on a best-value tradeoff basis considering the following factors: management approach, technical approach, past performance, and cost/price. Id. at 17. The management approach and technical approach factors were equally important and each more important than the past performance factor. Id. The non-price factors, when combined, were significantly more important than cost/price. Id.

As relevant here, with respect to the cost/price factor, the solicitation provided that “[c]ost/price will be evaluated for reasonableness in accordance with one or more cost analysis and/or price analysis techniques identified in FAR 15.404.” Id. at 19. The solicitation also provided that the agency would perform a cost realism analysis of the proposed labor costs for all cost reimbursable contract line item numbers (CLINs) to “determine if the cost proposal is realistic for the work to be performed, reflects a clear understanding of the requirements, and is consistent with the methods and approach in the technical proposal.” Id. The solicitation further stated that, as part of the cost realism analysis, the agency would “[e]valuate each offeror’s proposed costs for all cost reimbursable CLINs in relation to the offeror’s specific technical approach to ensure consistency.” Id. The agency explains that it anticipated a “significant amount” of work to be performed on a cost reimbursement basis.<sup>2</sup> Memorandum of Law (MOL), Jan. 3, 2019, at 6.

Proposals were due by July 21. RFP at 2.

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<sup>1</sup> Citations to the RFP are to the conformed copy provided in Exhibit 1 of the agency report submitted in the protest docketed as B-416390.2 and B-416390.3.

<sup>2</sup> The record confirms that the vast majority of offerors’ proposed cost/price was attributable to the cost reimbursement CLINs. See e.g., Agency Report (AR), Exh. 14, Salient Revised Proposal, at 83; Exh. 13, Abacus Revised Proposal, at 68.

## Award to Abacus

Twelve offerors, including Abacus and Salient, submitted proposals. First COS at 2. After a ten-month evaluation period, USCIS issued the task order to Abacus.<sup>3</sup> Id.; MOL at 5. Salient filed a protest with our Office, which we docketed as B-416390. In its protest, Salient alleged, among other things, that Abacus's cost/price was unrealistically low. AR, Exh. 8, Salient's Protest, at 7. Specifically, Salient alleged that Abacus proposed to "pay incumbent personnel at lower labor rates than they are currently being paid by the incumbent contractor, Salient[.]"<sup>4</sup> Id. Salient argued that "[i]t is unrealistic to expect that Salient's employees will accept such substantial pay cuts, and thus the Agency should have adjusted Abacus's proposed labor rates upwards to be consistent with the rates those individuals are being paid by Salient--their current employer." Id. at 8.

Salient's allegations, however, were based on incorrect information provided by the agency in the debriefing. Id. at 3. Specifically, the agency informed Salient that Abacus's proposed cost/price was \$94,327,651 when, in actuality, Abacus's cost/price was \$107,178,991. AR, Exh. 17, Revised Business Evaluation, at 3. As a result of this mistake, Salient understood Abacus's cost/price to be approximately \$15.6 million lower than Salient's proposed cost/price of \$109,931,718. AR, Exh. 8, Salient's Protest, at 7.

After the filing of Salient's protest, USCIS notified our Office that it intended to take corrective action. The agency explained that it had discovered several errors in its cost realism analysis and that, as a result, it intended to revise the evaluation report and make a new award. First Corrective Action Notice, June 15, 2018; First COS at 2. We dismissed Salient's protest as academic. Salient CRGT, Inc., B-416390, June 19, 2018 (unpublished decision).

## Reevaluation and Award to Salient

As part of the agency's reevaluation, USCIS established a competitive range comprised of the four most highly rated proposals--those of Abacus, Salient, and two other offerors (Offerors A and B). AR, Exh. 10, Down Selection, at 13. The agency conducted discussions with and obtained revised proposals from these four offerors. First COS at 2-3; AR, Exh. 20, Source Selection Decision, at 7-8.

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<sup>3</sup> The initial award to Abacus was made without discussions. First COS at 2.

<sup>4</sup> The incumbent contractor, Information Innovators, Inc., is now a subsidiary of Salient. MOL at 4; Protest at 2.

USCIS’s reevaluation of offerors’ revised proposals is summarized in the following table:

Offeror	Management Approach	Technical Approach	Past Performance	Proposed Cost/Price	Most Probable Cost/Price
Abacus	Outstanding	Good	Acceptable	\$101,875,487	\$99,329,725
Salient	Good	Outstanding	Acceptable	\$88,015,622	\$98,772,657
Offeror A	Good	Good	Acceptable	\$96,696,002	\$101,197,318
Offeror B	Good	Satisfactory	Acceptable	\$112,937,359	\$112,937,359

AR, Exh. 17, Revised Business Evaluation, at 3, 8.

Relevant here, in its revised proposal, Salient reduced its proposed cost/price by approximately \$21.9 million, id. at 3, which prompted a request from the agency to explain this “significant” decrease in cost/price. AR, Exh. 12, Discussion Emails, at 28; MOL at 11. Of particular concern to the agency was a [DELETED] reduction in subcontractor labor costs despite the fact that the proposed number of full-time equivalents (FTEs) remained the same. Id.; MOL at 11.

Salient responded that several factors contributed to the reduction in its proposed cost/price. AR, Exh. 12, Discussion Emails (Salient), at 27. According to Salient, the most sizeable reduction was due to a reassessment of the market data for direct labor rates. Id. Salient explained that market data showed a decrease in direct labor rates of [DELETED], which equated to [DELETED] in savings.<sup>5</sup> Id. It appears from the record that Salient used this data to renegotiate with its subcontractors. Id. Salient explains that, “[a]s the incumbent[,] our subcontractors in our original proposal passed on incumbent rates rather than looking at the market current [direct labor] rates.” Id. After renegotiation, Salient’s subcontractors agreed to “new rates” that are “supported by market conditions” in order “to be part of a winning team and not just a proposing incumbent team.” Id. The contracting officer explains that he “accepted Salient’s response on these issues as sufficient and considered the reductions realistic.”<sup>6</sup> First COS at 4.

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<sup>5</sup> The record reflects that the agency sought documentation to support Salient’s claim that market rates reflected a [DELETED] decrease, which Salient furnished. Id. at 39-53; MOL at 12 (explaining that Salient provided data from salary.com to support its proposed labor rates).

<sup>6</sup> Despite accepting Salient’s response in this respect, the agency nevertheless adjusted Salient’s cost/price upwards by \$10.8 million because the proposal assumed a reduction in direct labor rates from the base period through the option years. AR, Exh. 17, Revised Business Evaluation, at 7; Exh. 20, Source Selection Decision, at 14-15; First COS at 4-5. The agency adjusted the labor rates “so they are all the same in the base period and each of the option periods.” AR, Exh. 17, Revised

(continued...)

On November 23, USCIS issued the task order to Salient. AR, Exh. 21, Task Order. In the source selection decision, the contracting officer, who served as the source selection authority, discussed the benefits of Abacus's and Salient's proposals, finding that both proposals met and exceeded the requirements. AR, Exh. 20, Source Selection Decision, at 18. Ultimately, the contracting officer concluded that "[t]he higher proposed price from Abacus (\$557,068.35 or 1%) is not justified by the fact that both [proposals] are rated equally overall and the strengths offered by Abacus do not provide enough value to support the price premium." Id. As a result, the contracting officer decided that Salient's proposal represented the best value. Id.

### Abacus's Protest

On December 4, Abacus filed a timely protest with our Office, which we docketed as B-416390.2. In its protest, Abacus raised five protest grounds. First, Abacus argued that the agency failed to meaningfully evaluate Salient's and Abacus's proposals for cost and price realism. Protest at 2, 10-15. Second, Abacus argued that the agency unreasonably evaluated Salient's proposal under the management approach and technical approach factors by failing to consider the effect of Salient's significant cost/price reduction on its ability to successfully perform the requirement. Id. at 2, 15-18. Third, Abacus argued that the agency engaged in unequal and misleading discussions. Id. at 2, 18-20. Fourth, Abacus argued that the agency unreasonably evaluated Salient's past performance by failing to consider performance problems allegedly associated with Salient's subsidiary on the incumbent contract. Id. at 2, 20-22. Finally, Abacus argued that the agency conducted a flawed best-value determination due to the foregoing evaluation errors. Id. at 22.

On January 3, 2019, the agency submitted an agency report responding to the protest. After receipt of the agency report, Abacus filed comments in which it expanded on its initial protest grounds. Abacus also raised the following five supplemental protest grounds:

(1) the agency mechanically assigned Abacus's and Salient's proposals the same technical adjectival ratings the agency had assigned prior to taking corrective action based on the faulty premise that neither the proposals nor the technical evaluation team's assessments had changed during the reevaluation, Supp. Protest & Comments at 3, 5-8;

(2) the agency improperly declared the proposals to be technically equal without discharging its duty to look behind the adjectival ratings to determine whether there was any substantive basis for asserting technical equivalency, id. at 3, 7-8;

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(...continued)

Business Evaluation, at 7. The agency concluded that "[i]t is unrealistic to expect staff to take a pay cut from the base period to the option periods." Id.

(3) the agency conducted a flawed and disparate evaluation of the proposals under both the management approach and technical approach factors, id. at 3, 8-9, 13-20;

(4) the agency unreasonably evaluated past performance on an acceptable/unacceptable basis, and failed to evaluate one of the past performance references submitted by Abacus, id. at 4, 20-24;

(5) the agency improperly adjusted Abacus's [DELETED] general and administrative (G&A) rate, id. at 38-40; and

(6) the agency unreasonably decided to take corrective action in June 2018 in response to Salient's protest of the award to Abacus, id. at 40-43.

On January 22, USCIS notified our Office of its intent to take corrective action a second time. The agency represented that its most probable cost adjustment contained two errors impacting the agency's award determination.<sup>7</sup> Second Corrective Action Notice, Jan. 22, 2019, at 2. As a result, USCIS proposed to rescind the award to Salient.<sup>8</sup> Id. Our Office subsequently dismissed the protest as academic. Abacus Tech. Corp., B-416390.2, B-416390.3, Jan. 25, 2019 (unpublished decision). On February 11, Abacus filed its request for reimbursement of protest costs.

## DISCUSSION

Abacus argues that its protest challenging the issuance of the task order to Salient was clearly meritorious and that the agency unduly delayed in taking corrective action. Thus, Abacus requests that our Office recommend that it be reimbursed the reasonable costs of filing and pursuing its protest. The agency counters that Abacus's initial protest grounds fall short of our Office's clearly meritorious standard, and that the agency did not unduly delay in taking corrective action in response to any clearly meritorious grounds identified by Abacus in its supplemental protest. Under its theory, Abacus is not entitled to any protest costs.

Our Office may recommend reimbursement of protest costs, including reasonable attorneys' fees, if, based on the circumstances of the case, we determine that the

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<sup>7</sup> The agency did not identify these two errors in its corrective action notice. In its opposition to Abacus's request for costs, however, the agency explained that it failed to upwardly adjust one labor category in Salient's proposal, and that it erroneously upwardly adjusted Abacus's [DELETED] G&A rate. Second COS, Feb. 22, 2019, at 6.

<sup>8</sup> USCIS also proposed to cancel the solicitation and resolicit its requirement using a different contract vehicle. Second Corrective Action Notice at 2. A few days later, the agency cancelled the solicitation. On February 1, Abacus filed a protest with our Office challenging the cancellation, which we denied on May 7. Abacus Tech. Corp., B-416390.5, May 7, 2019, 2019 CPD ¶ 172.

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 (CICA) of 1984, 31 U.S.C. § 3554(c)(1)(A); 4 C.F.R. § 21.8(e); Centurum, Inc.--Costs, B-415070.2, Mar. 8, 2018, 2018 CPD ¶ 106 at 4. 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. Deque Sys., Inc.--Costs, B-415965.5, Aug. 23, 2018, 2018 CPD ¶ 304 at 4.

Based on our review of the record, we find Abacus's challenge to the agency's cost realism analysis of Salient's proposal to be clearly meritorious. Moreover, we find that the agency unduly delayed taking corrective action in response to this clearly meritorious ground.

### Cost Realism Evaluation

The crux of Abacus's argument was that Salient's "dramatic" reduction in cost/price should have triggered the agency to consider whether Salient's proposed labor rates were realistic for the work to be performed and consistent with the methods and approach set forth in Salient's technical proposal. Protest at 11-12; Supp. Protest & Comments at 2-3, 9-13; 24-35. Abacus argued that, had the agency meaningfully evaluated the realism of Salient's proposal, it would have eliminated the proposal from consideration for award or, alternatively, upwardly adjusted Salient's most probable cost. Protest at 15.

Where a contract or order that includes cost-reimbursable CLINs is to be awarded, an offeror's estimated costs of performing the cost-reimbursable CLINs are not controlling since the estimates may not provide valid indications of the final actual costs that the government is required to pay. FAR §§ 15.305(a)(1), 15.404-1(d). Instead, the agency must perform a cost realism analysis to determine the costs likely associated with an offeror's specific technical approach. Target Media Mid Atlantic, Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 4 (considering FAR part 15 cost realism standards in a FAR part 16 task order protest).

In this respect, the FAR provides that "[c]ost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's proposal." FAR § 15.404-1(d)(1) (emphasis added). The FAR further provides that "[t]he probable cost . . . should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal." FAR § 15.404-1(d)(2)(i) (emphasis added). In short, a proper cost realism evaluation prevents an offeror from improperly "having it both ways"--that is, from receiving a technical evaluation rating based on its proposed approach but failing to propose costs that

reasonably reflect that approach. AdvanceMed Corp., B-414373, May 25, 2017, 2017 CPD ¶ 160 at 6.

The solicitation reaffirmed these principles, stating that the agency would perform a cost realism analysis of the proposed labor costs for all cost reimbursable CLINs to “determine if the cost proposal is realistic for the work to be performed, reflects a clear understanding of the requirements, and is consistent with the methods and approach in the technical proposal.” RFP at 19 (emphasis added). The RFP also stated that, as part of the cost realism analysis, the agency would “[e]valuate each offeror’s proposed costs for all cost reimbursable CLINs in relation to the offeror’s specific technical approach to ensure consistency.” Id. (emphasis added). The record here demonstrates, however, that the agency’s cost realism analysis did not reasonably assess the likely costs stemming from Salient’s proposed staffing approach.

As reflected in Salient’s initial and revised proposals, Salient’s proposed technical approach to staffing the task order was to use the incumbent staff. Salient’s proposal stated that it will “bring all our existing incumbent personnel” and “retain our entire staff for NATIONS, providing USCIS zero change and little to no risk.” AR, Exh. 14, Salient Revised Proposal, at 20, 31.<sup>9</sup> See also id. at 17 (“[Salient] brings a trained incumbent staff fully prepared to immediately transition to the NATIONS contract.”); id. at 31 (“Our incumbent team and trusted leadership remain[] intact and personnel can continue working without interruption on their mission.”); id. (“Our incumbent team is already prepared to continue providing services[.]”); Exh. 4, Salient Initial Proposal, at 19, 29.

Salient’s proposed approach to retain the incumbent workforce was an important factor in the source selection decision. See AR, Exh. 20, Source Selection Decision, at 16-17, 18. The contracting officer mentioned Salient’s incumbent status several times and found that “[a]s the incumbent Salient . . . is familiar with the work to be performed” and “can transition immediately” with no costs required for transition. Id. at 16, 17. Indeed, Salient’s incumbent status was among “the most meaningful benefits” offered by Salient’s proposal. Id. at 16.

Salient’s revisions to its cost/price proposal, however, cast doubt on Salient’s ability (and intent) to retain all the incumbent staff. As explained above, Salient significantly reduced its labor rates during the reevaluation. Overall, Salient’s proposed cost/price decreased by \$21.9 million, or almost 20 percent. AR, Exh. 17, Revised Business Evaluation, at 7; Exh. 20, Source Selection Decision, at 14-15. When the agency asked Salient to support the realism of its dramatically reduced labor costs, Salient defended its proposed rates by explaining, among other things, that it was able to reduce its labor costs by abandoning incumbent rates in favor of current market rates. AR, Exh. 12, Discussion Emails, at 27.

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<sup>9</sup> Citations to page numbers in this exhibit refer to the Bates numbers provided by the agency in its report.



The record reflects that the agency made no attempt to reconcile Salient's proposed labor rate cuts with its proposed staffing approach of providing all the incumbent personnel. See AR, Exh. 17, Revised Business Evaluation, at 7. The agency did not question whether Salient's decision was realistic in light of the offeror's proposed technical approach of retaining the entire incumbent staff. The agency also never questioned why Salient would abandon incumbent rates in favor of market rates when Salient proposed to provide the entire incumbent workforce rather than hire new personnel from the market.<sup>10</sup>

The agency's actions are especially surprising in light of the fact that, as Abacus points out, Salient had previously filed a protest challenging the realism of Abacus's initial cost/price, which Salient incorrectly believed to be \$94 million. Protest at 11; Supp. Protest & Comments at 29. As explained above, Salient argued in its protest that a total cost/price of \$94 million reflected rates so far below Salient's own incumbent rates that the cost/price was facially unrealistic. AR, Exh. 8, Salient's Protest, at 7-8. Salient contended that the agency should have adjusted Abacus's proposed labor rates upwards to be consistent with those actually paid to the incumbent employees on Salient's contract. Id. Despite these contentions, Salient's revised proposal included a reduced cost/price of \$88 million, made possible in large part by Salient's decision to offer market rates instead of its previously proposed incumbent rates.

It is well-established that an agency must perform and document a cost realism evaluation that analyzes whether the rates, including market rates, relied on by the awardee would be sufficient to retain incumbent personnel where the offeror proposes to staff the new contract with incumbent personnel. See e.g. Target Media Mid Atlantic, Inc., supra, at 5-6 (sustaining protest where agency failed to reasonably assess likely costs stemming from the awardee's proposed technical approach to hire the incumbent's employees); Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970 et al., Nov. 25, 2015, 2015 CPD ¶ 373 at 12-13 (sustaining protest where there was an "absence of any contemporaneous supporting rationale for the agency's determination that [awardee's] proposed rates, which departed from the historical rates paid to incumbent personnel, were sufficient to retain the high percentage of incumbent personnel that were anticipated to be retained"); Tantus Technologies, Inc., B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 11 (sustaining protest based on unreasonable cost realism evaluation because awardee's "proposal to dramatically reduce the hourly rates of the three key personnel at issue and continue to retain these individuals should have raised concerns"); Wisconsin Physicians Serv. Ins. Corp., B-401063, May 4, 2009, 2012 CPD ¶ 35 at 8-9 (sustaining protest where agency accepted the awardee's proposed labor rates for its existing staff despite the fact that

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<sup>10</sup> In adjusting Salient's option year cost/price, the agency reasonably concluded that "[i]t is unrealistic to expect staff to take a pay cut from the base period to the option periods." AR, Exh. 17, Revised Business Evaluation, at 7. Despite this conclusion, the agency inexplicably found it realistic for Salient to reduce its labor rates substantially between the incumbent contract and the new task order.

the rates were based on market survey data rather than the actual labor rates for staff); Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 15-16 (sustaining protest where agency's cost realism evaluation analyzed the awardee's current salary structure but not the incumbent rates despite the awardee's proposal to match existing salaries). We likewise conclude that, as part of its cost realism evaluation, USCIS should have considered whether Salient's proposed labor rates were sufficient to support Salient's approach to staff the contract with incumbent personnel.<sup>11</sup>

In sum, we find that the agency's cost realism evaluation failed to properly account for the technical approach proposed by Salient. For this reason, we find Abacus's challenge to the agency's cost realism analysis to be clearly meritorious. Moreover, we conclude that the agency unduly delayed taking corrective action in the face of this clearly meritorious protest ground. Abacus's protest dated December 4, 2018, challenged the propriety of the agency's cost realism analysis, specifically alleging that Salient's "dramatic" reduction in cost/price and "extremely" low total cost/price demonstrated that it proposed "either rates that are unrealistically low or too few staff to provide the level of service required, or both." Protest at 12. A reasonable inquiry into the merits of Abacus's protest prior to the submission of the agency report would have revealed that Salient's cost and technical proposals were incompatible.

#### Other Grounds

As explained above, Abacus's initial and supplemental protests raise several other protest grounds. As a general rule, we recommend that a successful protester be reimbursed its incurred costs with respect to all the issues pursued, not merely those on which it has prevailed. CloudFirstJV, LLC--Costs, B-416872.4, May 10, 2019, 2019 CPD ¶ 177 at 4. In appropriate cases, 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. BAE Tech. Servs., Inc.--Costs, B-296699.3, Aug. 11, 2006, 2006 CPD ¶ 122 at 3. In determining whether protest issues are so clearly severable as to essentially constitute separate protests, we consider, among other things, the extent to which the issues are interrelated or intertwined, i.e., the extent to

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<sup>11</sup> At no time did the agency, in responding to Abacus's protest of the agency's cost realism analysis or in responding to Abacus's request for costs, argue that Salient proposed incumbent labor rates or that the agency evaluated such rates. See generally MOL at 8-16; First COS at 4-5; Second COS at 1-7; Agency Opp'n to Req. for Costs at 1-10. Nevertheless, we note that in responding to a different protest ground, the agency's memorandum of law included--without any explanation or argument--the following sentence: "The compensation proposed by Salient in the revised proposal meets or exceeds the actual pay for the incumbent personnel[.]" MOL at 28 (citing AR, Exh. 16, Salient Most Probable Cost Template). We have reviewed the document cited in the legal memorandum and do not find that it supports the contention that Salient proposed incumbent labor rates for its [DELETED] FTEs.

which successful and unsuccessful arguments share a common core set of facts, are based on related legal theories, or are otherwise not readily severable. CloudFirstJV, LLC--Costs, *supra*.

In applying these principles here, we conclude that the following protest grounds are based on the same set of operative facts and legal theories as the clearly meritorious ground described above, and thus they are not readily severable:

(1) Abacus's challenge to the agency's evaluation of Salient's proposal under the management approach and technical approach factors as set forth in its initial and supplemental protests. *See* Protest at 2, 15-18; Supp. Protest & Comments at 9-13.

(2) Abacus's additional challenges to the agency's cost realism analysis of Salient's proposal as set forth in its supplemental protest. Supp. Protest & Comments at 24-35.

(3) Abacus's challenge to the agency's best-value determination as set forth in its initial and supplemental protests. *See id.* at 40; Protest at 22.

Thus, we grant the protester's request for protest costs with respect to these challenges.

Regarding the remaining grounds raised in Abacus's initial and supplemental protests, we find that they are not interrelated or intertwined with the clearly meritorious challenge to the agency's cost realism evaluation. Having made this finding, we conclude the protester is not eligible for reimbursement of its costs associated with these grounds because they fall within one of two categories. Some grounds, such as Abacus's challenge to the agency's evaluation of Salient's past performance, are not themselves clearly meritorious. Other grounds, such as Abacus's challenge to the agency's adjustment of Abacus's G&A rate--which the agency concedes to be clearly meritorious, Agency Opp'n to Req. for Costs, Feb. 22, 2019, at 9; Second COS at 6--were raised for the first time in the supplemental protest after which the agency promptly took corrective action. Accordingly, we do not recommend the reimbursement of costs associated with these remaining grounds.

## RECOMMENDATION

We recommend that USCIS reimburse Abacus for the reasonable costs of filing and pursuing its protests, including reasonable attorneys' fees, to the extent those costs were incurred in connection with its challenge to the agency's cost realism analysis and those challenges clearly intertwined with this ground. We do not recommend reimbursement for the remaining protest grounds. Abacus should submit its claim for costs, detailing and certifying the time expended and costs incurred, directly to the

agency within 60 days of receipt of this decision. Bid Protest Regulation, 4 C.F.R. § 21.8(f)(1).

The request is granted in part and denied in part.

Thomas H. Armstrong  
General Counsel