



Decision

Matter of: CareandWear II, LLC

File: B-419140; B-419140.2

Date: December 10, 2020

Chaitenya Razdan, for the protester.
Amanda Stone, Esq., Defense Logistics Agency, for the agency.
Raymond Richards, Esq., and Laura Eyester, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's interpretation of a solicitation requirement to submit a test report showing that the offeror's product met certain performance metrics is denied where the solicitation's test requirements were unambiguous.
2. Allegation of bad faith on the part of agency personnel is denied where there is no evidence in the record to support a finding that government personnel acted with specific, malicious intent to harm the protester.

DECISION

CareandWear II, LLC (Care+Wear), a small business of New York, New York, protests its elimination from award consideration by the Defense Logistics Agency (DLA), under request for proposals (RFP) No. SPE1C1-20-R-0138, issued for disposable isolation gowns. The protester argues that it submitted the lowest-priced, technically acceptable proposal, and the agency's decision to eliminate Care+Wear from the competition was unreasonable. Additionally, the protester alleges that the agency acted in bad faith.

We deny the protest.

BACKGROUND

DLA issued the solicitation on July 20, 2020, pursuant to the commercial item procedures of Federal Acquisition Regulation (FAR) part 12, and the evaluation procedures of FAR subpart 15.4. Conformed RFP (RFP) at 3-4, 26. The RFP sought proposals for level 2 disposable isolation gowns, and divided the agency's requirement into three distinct lots based on the preference for certain domestic commodities and

the approval of a domestic non-availability determination.¹ *Id.* at 4-5, 14. The RFP anticipated the award of multiple fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contracts with an ordering period of 12 months, to the responsible offerors submitting the lowest-priced, acceptable proposals. *Id.* at 6-7. As the agency explains, in order to prevent exposure to COVID-19, personnel interacting with infected individuals or materials and supplies require personal protective equipment. Redacted Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. DLA issued the solicitation in support of the requirement to obtain urgently needed personal protective equipment, in this case, isolation gowns. *Id.*

The RFP established two non-cost/price evaluation factors: technical, and past performance. RFP at 25, 26-27. The technical factor, called the product demonstration model (PDM), consisted of two subfactors: test reports; and visual, dimensional, and manufacturing requirements. *Id.* Relevant here, the RFP's instructions to offerors required the submission of the following test reports: barrier performance ([American Association of Textile Chemists and Colorists (AATCC)] 42 and 127);² tensile strength (ASTM D5034); tear strength (ASTM D5587 or D5733); seam strength (ASTM D1683/D1683M); biocompatibility (ISO/ANSI/AAMI 10993-10); and flammability (Consumer Product Safety Commission standard set forth in 16 C.F.R. part 1610). *Id.* at 23. Under the test report subfactor, the agency would evaluate the test reports submitted. *Id.* at 26; *see also* AR, Exh. 3, Amend. 02, Proposal Submission Form at 8.

The RFP provided that the PDM factor would be evaluated on an acceptable/unacceptable basis; each subfactor would be independently evaluated and an overall rating would be assigned. RFP at 26. An acceptable rating under the PDM factor would indicate that the proposal clearly met the minimum requirements of the solicitation, while an unacceptable rating would indicate that the proposal did not clearly meet the minimum requirements of the solicitation. *Id.* at 27.

As relevant here, the RFP advised that proposed disposable isolation gowns "shall meet all [of the] requirements" in ASTM F3352-19 and ANSI/AAMI PB70. *Id.* at 15. ASTM F3352-19 provides minimum requirements for isolation gowns used for the protection of healthcare workers. AR, Exh. 7, ASTM F3352 at ¶ 4.1. ASTM F3352 explains that isolation gowns must be designed to comply with the barrier performance requirements of ANSI/AAMI PB70. *Id.* at ¶¶ 4.3, 5.2. Further, ASTM F3352 states that ANSI/AAMI

¹ Level 2 refers to a quality standard established by the American National Standards Institute (ANSI) and the Association for the Advancement of Medical Instrumentation (AAMI). Agency Report (AR), Exh. 7, American Society for Testing and Materials (ASTM) F3352 at ¶ 4.1; *id.*, Exh. 8, ANSI/AAMI PB70 at i (see Abstract).

² AATCC developed AATCC 42, Water Resistance: Impact Penetration Test, which measures the resistance of fabrics to the penetration of water by impact. AR, Exh. 9, AATCC 42 at 1. AATCC developed AATCC 127, Water Resistance: Hydrostatic Pressure Test, which measures the resistance of fabric to water penetration resulting from hydrostatic pressure. AR, Exh. 10, AATCC 127 at 1.

PB70 requires that the entire isolation gown, including seams, must meet certain barrier performance requirements. *Id.* at ¶¶ 3.1.3.1, 4.3.3. ASTM F3352 states that the manufacturer must provide detailed information about the barrier performance of each critical zone component. *Id.* at ¶ 5.2. ASTM F3352 states that for isolation gowns, the critical zone comprises the entire gown, including the seams, but excludes the cuffs, hems, and bindings. *Id.*

ANSI/AAMI PB70 establishes the standards for liquid barrier performance and classification of protective apparel intended for use in healthcare facilities. AR, Exh. 8, ANSI/AAMI PB70 at 1-2. ANSI/AAMI PB70 explains that the requirements for the design and construction of gowns, such as isolation gowns, are based on the anticipated location and degree of liquid contact given the expected condition of use, and that critical zones are those areas where direct contact with liquids (blood and body fluids) are most likely to occur. *Id.* at ¶ A.4.2.3.1. Therefore, ANSI/AAMI PB70 states that isolation gowns shall be classified and labeled according to the barrier performance properties of their critical zones. *Id.* at ¶ 4.2.1.1. ANSI/AAMI PB70 further states:

The barrier performance of all critical zone components, including seams and points of attachments, shall be determined. The classification of the product shall be a number denoting the performance of the critical zone component having the lowest barrier performance. The performance of seams between critical zones and other protective areas or between critical zones and nonprotective areas shall not determine the barrier classification.

Id. To meet ANSI/AAMI PB70 level 2, a gown must perform to the following standard:

When tested for water resistance in accordance with AATCC 42 or [Worldwide Strategic Partners (WSP)] 80.3 (impact penetration) and AATCC 127 (hydrostatic pressure) and under the conditions specified in [paragraph 5.2.1 of the ANSI/AAMI PB70 guide], all critical zone components shall have a blotter weight gain of no more than 1.0 [grams (g)] and a hydrostatic resistance of at least 20 [centimeters (cm)], with an [acceptable quality level (AQL)] of 4%/[rejectable quality level (RQL)] of 20%.

Id. at ¶ 4.2.1.2.

The solicitation contained several attachments. One attachment concerned the requirements and test methods for the gowns. Consistent with ANSI/AAMI PB70 requirements, this table stated, in relevant part, as follows:

TABLE 1 - Requirements and test methods

Characteristics	Test Method	Requirements
		AAMI PB70 Level Level 2
Barrier Performance A.	AATCC 42	≤ 1.0g
	AATCC 127 or EN 20811	≥ 20 cm ≥ 20 cm

A. According to ANSI/AAMI PB70 with 4% acceptable quality level (AQL), 20% rejectable quality level (RQL).

RFP at 48, List of Attachments; Attach. Requirements and Test Methods.

With respect to past performance, the solicitation advised that the agency would evaluate offerors using their overall supplier performance risk system scores. RFP at 27. The solicitation also advised that if no information existed for an offeror, that offeror’s past performance score would be rated as acceptable. *Id.*

On July 31, the agency issued amendment 03, which stated that if the government held discussions to permit offerors to address deficiencies and submit revisions or additional information such as test reports, the discussions would be conducted expeditiously and offerors would have only a short period of time to address any noted deficiencies. AR, Exh. 5, Amend. 03 at 2. The amendment further stated that the government would not hold up discussions for any incomplete or pending submissions, and that any offeror failing to address noted deficiencies or provide all required test reports at the time of closing of discussions would be found non-compliant and ineligible for award. *Id.*

The due date set for receipt of initial proposals was August 3, 2020. *Id.* at 1. The agency received 129 proposals, including a proposal from Care+Wear, in response to the RFP for the agency’s Lot 1 requirements for level 2 disposable isolation gowns.³ AR, Exh. 28, Source Selection Decision Document (SSDD) at 4. Following the initial evaluation of proposals, Care+Wear’s proposal was rated as unacceptable under the PDM factor. AR, Exh. 13, Pre-Negotiation Objective Memorandum at 19. The agency found Care+Wear’s proposal to be acceptable under the visual, dimensional, and manufacturing requirements subfactor of the PDM factor. *Id.* However, the agency found Care+Wear’s proposal unacceptable under the test reports subfactor of the PDM factor. *Id.* The agency explained that Care+Wear “did not provide test reports and/or [certificates of compliance (COC)] for tensile strength, tear strength, seam strength,

³ Lot 1 gowns were subject to 10 U.S.C. § 2533a--known as the Berry Amendment--and Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7012, Preference for Certain Domestic Commodities. RFP at 5.

biocompatibility, and flammability as required. [Care+Wear] did provide test reports for barrier performance; however, test reports for barrier performance for the seams were not provided.” *Id.* The agency rated Care+Wear as acceptable under the past performance factor because Care+Wear did not have any past performance records on file. *Id.* at 20.

On August 27, the agency opened discussions with Care+Wear. AR, Exh. 13, Pre-Negotiation Memorandum at 62 (competitive range determination); AR, Exh. 14, Discussions Letter at 1-2. In the discussions letter, the agency explained its concerns with Care+Wear’s initial proposal. *Id.* The agency stated that Care+Wear’s proposal did not include test reports or COCs for tensile strength, tear strength, seam strength, biocompatibility, and flammability as required by the solicitation. *Id.* at 1. The agency also explained that test reports for barrier performance were provided, however, test reports were not provided for barrier performance at the seams of the gown. *Id.* The agency requested a response to the discussions letter by 12:00 p.m., August 31. *Id.* at 2.

On August 30, Care+Wear replied to the discussions letter. AR, Exh. 15, Additional Documents at 1. Care+Wear provided responses to the agency’s concerns and attached “all test reports.” *Id.* The attached test reports included a report for biocompatibility, a report for impact penetration and hydrostatic pressure (the barrier test report), and two identical reports for tensile, tear, seam, and flammability. *Id.*; AR, Exh. 16, Test Reports at 2-4.

On September 2, DLA sent Care+Wear a request for final proposal revisions. AR, Exh. 17, Req. for Final Proposal Revisions at 1. DLA informed Care+Wear that it had evaluated the materials submitted on August 30, and noted the following outstanding discrepancy: “Test reports for barrier performance for the seams were not provided. The attachment submitted for barrier performance shows that [the testing facility] performed testing on one, nonwoven sample provided by [the manufacturer]. There is no indication [that] seams [were] tested for barrier performance.” *Id.* The time set for receipt of final proposal revisions was 3:00 p.m. on September 3. *Id.* The agency warned that responses provided after that time would not be evaluated as part of the proposal. *Id.*

Later on September 2, Care+Wear responded to DLA’s request for final proposal revisions. AR, Exh. 18, Email to Agency at 1. Care+Wear’s head of business development stated that its prior submission included a test report on barrier performance showing the results of both AATCC 42 and AATCC 127. *Id.* Additionally, the email stated: “Can you give me a call to discuss, as maybe I am missing something?” *Id.* The next morning, Care+Wear’s head of business development followed up with DLA via email stating: “I tried calling and emailing a few times yesterday to discuss the feedback but I wasn’t able to get anyone. Can you let me know if my emails are going through and if you received them[?] Also, we still have outstanding questions about the feedback.” AR, Exh. 20, Email to Agency at 2.

DLA replied to Care+Wear at 1:42 p.m., on September 3, and said:

Seams are a component of the critical zone (Section 5.2 of ASTM F3352). Isolation Gowns are classified by the lowest Barrier Performance of any component in the critical zone. Therefore an [i]solation [g]own labeled as Level 2 must have seams that pass Level 2 for Barrier Performance, and an Isolation Gown labeled as Level 3 must have seams that pass Level 3 for Barrier Performance.

AR, Exh. 24, Email from Agency at 1. Care+Wear responded at 3:16 p.m., on September 3, saying: “Thanks a lot for the call earlier today. As I mentioned, we had submitted the barrier performance test and the seam strength test. We are reviewing this specific component of the barrier performance and [will] get it out to you asap.”⁴ Comments, Attach. 1, Email from Protester at 43; COS/MOL at 12. Care+Wear did not provide a barrier performance test for the seams by September 3.

DLA decided to make a round of awards based on the revised proposals received in response to the discussions opened on August 27. COS/MOL at 12. On September 10, DLA emailed a letter to Care+Wear stating that awards were being made under Lot 1 based on revised proposals. AR, Exh. 22, Second Discussions Letter at 1. DLA explained that a second round of awards under Lot 1 was contemplated, and that the agency was reopening discussions with Care+Wear for this additional Lot 1 requirement. *Id.* Similar letters were sent to the other offerors competing for the Lot 1 requirement. COS/MOL at 13 n.6. Regarding Care+Wear’s proposal, DLA noted the following outstanding discrepancy: “Test reports for barrier performance for the seams were not provided. The attachment submitted for barrier performance shows that [the testing facility] performed testing on one, nonwoven sample provided by [the manufacturer]. There is no indication seams [were] tested for barrier performance.” AR, Exh. 22, Second Discussions Letter at 1. The agency requested a response to the second round of discussions by September 14. *Id.*

On September 11, DLA’s customer (*i.e.*, the government entity requiring the gowns) informed the agency that additional funding for the second round of awards would not be provided and the award quantities already planned for Lot 1 under the first round of awards were sufficient. COS/MOL at 13; AR, Exh. 27, Price Negotiation Memorandum at 47. DLA therefore suspended the second round of awards under Lot 1. *Id.* Also on September 11, DLA emailed Care+Wear stating that the second round of discussions had been suspended and that no additional information would be accepted or evaluated by the government. AR, Exh. 25, Suspension Letter at 1.

⁴ The agency explains that this email was caught in the agency’s information technology security filter “based on an embedded URL” within the body of the message. COS/MOL at 15. DLA explains that the filter was necessary because it was based on “URLs or websites that are potentially harmful as identified within the filtering database.” *Id.* The agency recovered this email on September 25. *Id.*

On September 14, the agency made award to nine offerors under Lot 1, based on the proposals received in response to the first round of discussions; Care+Wear did not receive an award. AR, Exh. 27, Price Negotiation Memorandum at 49; AR, Exh. 29, Unsuccessful Offeror Letter at 1. Care+Wear's proposal was rated as unacceptable under the PDM factor. AR, Exh. 28, SSDD at 6. Since Care+Wear's proposal was found unacceptable under the PDM factor, the agency determined that Care+Wear was ineligible for award. *Id.* Care+Wear filed this protest with our Office on September 15.

Following receipt of the protest, to verify whether there were any non-received emails from Care+Wear regarding the procurement, the contracting officer contacted the agency's procurement process support unit, which referred her to DLA Information Operations. COS/MOL at 15. Information Operations confirmed that the government's server had filtered emails sent from @careandwear.com because these emails contained an embedded URL within the body of the messages. *Id.*

On September 25, Information Operations forwarded DLA's acquisition specialist six previously filtered emails sent by Care+Wear dated between August 28, 2020, and September 3, 2020. *Id.* at 15 n.9. None of these six emails contained test reports for barrier performance at the seams of Care+Wear's gown. *Id.* at 15.

Information Operations also recovered three filtered emails sent from Care+Wear which were dated between September 10, 2020, and September 15, 2020. *Id.* at 15-16, 16 n.10. One of these emails, dated September 10, 2020, included test reports for barrier performance of both the fabric of Care+Wear's gown, and the sleeve seams. *Id.* at 16; AR, Exh. 24, Email from Protester with Barrier Test Report at 1. The agency explained that "[a]lthough this report was submitted late and not evaluated, after the receipt of the protest, it was determined that the test report likely would have been considered acceptable, assuming that all seams were of the same construction[.]" COS/MOL at 16 n.11.

DISCUSSION

Care+Wear argues that its proposal represents one of the lowest-priced, technically acceptable offers, and the agency's decision to exclude Care+Wear's proposal from award consideration was unreasonable. The protester also argues that the agency acted in bad faith. DLA argues that the decision to exclude Care+Wear's proposal from award consideration was reasonable since Care+Wear's proposal lacked the required test reports, and thus, was not technically acceptable. For the reasons described below, we deny the protest.⁵

⁵ Care+Wear also argues that its proposal should have been rated as acceptable under the past performance factor. Protest at 1. As noted, Care+Wear's proposal was rated as acceptable under the past performance factor. AR, Exh. 28, SSDD at 6. Therefore, to the extent that Care+Wear protests its proposal's past performance rating, this fails to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); *id.* § 21.5(f). In addition,

Test Reports

Care+Wear asserts that its proposed gown fully complies with the RFP's requirements and its proposal included all required test reports, thus, its proposal was technically acceptable. Protest at 1; Comments at 1. According to the protester, DLA ignored the test reports submitted by Care+Wear; in this regard, the protester claims that it submitted the required reports with its initial proposal, and the agency failed to recognize them. *Id.* Care+Wear states that it resubmitted the required test reports in response to the first round of discussions, and that "the overall test had proven the gown had not only passed the level 2 requirements but also passed the level 3 requirements." *Id.* Further, the protester argues that the agency requested "a new test that had not been requested in the initial solicitation[.]" Protest at 1; Comments at 1. Care+Wear explains that this new test was sent via email on September 10. *Id.*

DLA states that Care+Wear's proposal "failed to conform to the material terms and conditions of the solicitation because it failed to timely provide a required complete test report under the PDM Factor." COS/MOL at 18-19. Since Care+Wear did not submit barrier performance test reports showing barrier performance at the seams of its gown prior to September 3--the due date for revised proposals--DLA argues that the contracting officer acted reasonably in finding Care+Wear's proposal not technically acceptable and thus ineligible for award. *Id.* at 29.

Where a protester and an agency disagree over the meaning of solicitation language, we will resolve the matter by first assessing whether each advanced interpretation is reasonable. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 5. An ambiguity exists where two or more reasonable interpretations of the solicitation are possible. *Id.* Care+Wear appears to be arguing that since the barrier performance test report it submitted listed certain scores meeting the barrier performance test requirements, the test report was sufficient. We disagree.

The solicitation stated that offerors were required to submit a barrier performance test report under the test report subfactor of the PDM factor. RFP at 23. In addition, the solicitation stated that proposed disposable isolation gowns "shall meet all [of the] requirements" in ASTM F3352-19 and ANSI/AAMI PB70. *Id.* at 15. ASTM F3352 explains that isolation gowns must be designed to comply with the barrier performance requirements of ANSI/AAMI PB70. AR, Exh. 7, ASTM F3352 at ¶¶ 4.3, 5.2. ASTM F3352 also states that ANSI/AAMI PB70 requires that the entire isolation gown, *including seams*, meet certain barrier performance requirements. *Id.* at ¶¶ 3.1.3.1, 4.3.3.

Care+Wear argues that DLA has failed to provide it with a debriefing. However, the issue of whether an agency provides a debriefing and the adequacy of a debriefing are not issues that our Office will consider. *Epoch Concepts, LLC*, B-408128.23, Apr. 3, 2014, 2014 CPD ¶ 119 at 3 n.2. To the extent that Care+Wear raises other collateral arguments, we have carefully reviewed the record and find no basis to sustain the protest.

ANSI/AAMI PB70 establishes standards for liquid barrier performance and classification of protective apparel intended for use in healthcare facilities. AR, Exh. 8, ANSI/AAMI PB70 at 1-2. ANSI/AAMI PB70 states that the “barrier performance of all critical zone components, including seams and points of attachments, shall be determined.” *Id.* at ¶ 4.2.1.1. For a level 2 gown, ANSI/AAMI PB70 states that the gown must, when tested for water resistance in accordance with AATCC 42 and AATCC 127, have a blotter weight gain of no more than 1.0 gram and a hydrostatic resistance of at least 20 centimeters for all critical zone components. *Id.* at ¶ 4.2.1.2.

We find that the solicitation was not ambiguous; it clearly required offerors to provide barrier test reports showing the barrier performance for the isolation gown’s critical zone components, which includes the seams. Although Care+Wear’s report submitted before the closing date for final proposal revisions showed a maximum water penetration of less than 1.0 gram, the report did not address seams. See AR, Exh. 16, Impact Penetration and Hydrostatic Pressure Report. Care+Wear admits that a barrier test report addressing seams was not provided until September 10--this is well after September 3, the closing time set for receipt of final proposal revisions. Comments at 1. Accordingly, the agency was reasonable in finding Care+Wear’s proposal unacceptable.

In addition, even if the solicitation was unclear as to the barrier performance testing requirements, then the protester’s argument that the agency created a new testing requirement during discussions is untimely. After the agency filed its report and the protester filed its comments, our Office requested additional briefing regarding the timeliness of the protest. Req. for Briefing at 1. In our request, we asked the parties to specifically address the protester’s challenge of the RFP’s test report requirement in light of our timeliness rules, 4 C.F.R. §§ 21.2(a)(1)-(2), and our decision in *Sikorsky Aircraft Corporation*. See *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶ 177.

In *Sikorsky Aircraft Corporation*, our Office discussed previous GAO decisions assessing the question of when an offeror must file a protest of an agency interpretation of the solicitation, where that interpretation has been advanced to one offeror in discussions as part of the agency’s evaluation. *Id.* at 9 (comparing *Learjet, Inc.*, B-274385 *et al.*, Dec. 6, 1996, 96-2 CPD ¶ 215 at 3-4; and *PM Servs. Co.*, B-310762, Feb. 4, 2008, 2008 CPD ¶ 42 at 3; with *Paragon Tech. Grp., Inc.*, B-412636, B-412636.2, Apr. 22, 2016, 2016 CPD ¶ 113 at 13 n.11; and *The Boeing Co.*, B-311344 *et al.*, June 18, 2008, 2008 CPD ¶ 114 at 28, 37).

DLA argues that the solicitation clearly required offerors to submit test data for barrier performance at the seams of a proposed gown; according to the agency, Care+Wear failed to comprehend the requirement. Agency Resp. to Req. for Briefing at 5. However, DLA asserts that during discussions, it advised Care+Wear of the agency’s interpretation of the RFP’s test report requirement. *Id.* at 5-6. DLA argues that, at that point, the protester “was aware of what test data was required and missing.” *Id.* DLA

asserts that to the extent the protester claims the test data was a new requirement added through negotiations, the protester was required to protest the test report requirement prior to the date set for receipt of final revised proposals. *Id.* at 6. The agency reasons that since Care+Wear did not raise its challenge until September 15, which is after the due date for receipt of final revised proposals, the protest is--in the alternative--untimely and must be dismissed. *Id.* We agree.

Alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1). Our decisions assessing the question of whether an offeror should file a protest of an agency's interpretation of the solicitation during discussions, where, as here, that interpretation has been advanced to one offeror in discussions as part of the agency's evaluation, have come to fact specific conclusions. *Sikorsky Aircraft Corp., supra.*

Care+Wear's protest challenging the RFP's test report requirement as a new requirement is untimely because the agency clearly advanced an interpretation of the solicitation during discussions that is contrary to the protester's understanding of the solicitation. *Id.* As early as August 27, DLA alerted Care+Wear that the firm failed to provide a barrier performance test report showing test results at the seams of its proposed gown, which was required under the solicitation. AR, Exh. 14, Discussions Letter at 1-2. Amendment 03 to the solicitation stated that the government would not hold up discussions for any incomplete or pending submissions, and that any offeror failing to address noted deficiencies or provide all required test reports at the time of closing of discussions would be found non-compliant and ineligible for award. AR, Exh. 5, Amend. 03 at 2. Rather than filing a protest challenging this requirement, Care+Wear submitted a revised proposal.

For all of these reasons, we have no basis to sustain the protest.

Bad Faith

Finally, Care+Wear alleges that DLA acted in bad faith throughout the procurement process. In this regard, the protester claims that DLA did not want to work with Care+Wear, so it found improper ways to render Care+Wear's proposal unacceptable. Comments at 2; Supp. Comments at 1-2; Resp. to Req. for Briefing at 1. Care+Wear argues that DLA was not responsive to the over 53 calls Care+Wear made to the agency, that DLA was always aware of the "filtered emails," and that there are possibly other reasons that show DLA has in bad faith ignored Care+Wear's gown. Comments at 1-3; Supp. Comments at 1-3.

The agency states that the contracting officer repeatedly reached out to Care+Wear in negotiations to ensure the company was receiving her emails and attachments, and that the protester understood the requirements. Supp. COS/MOL at 4. The agency also states that with respect to the filtered emails, since the agency received numerous proposal submissions and email communications from Care+Wear during the

acquisition, it was not aware that any specific emails from Care+Wear were being filtered for URL analysis. *Id.* at 5-6. Further, DLA highlights the fact that none of those filtered emails impacted Care+Wear's opportunity to submit a revised proposal with the missing test report. *Id.* at 6 n.4.

The protester has not provided any basis for our Office to conclude that the agency acted in bad faith. To establish bad faith, a protester must present convincing evidence that agency officials had a specific and malicious intent to harm the firm. *Trailboss Enters., Inc.*, B-415812.2 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 12. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Hanford Integrated Infrastructure Servs. Contractor, LLC*, B-418411 *et al.*, Apr. 22, 2020, 2020 CPD ¶ 159 at 18. There is no evidence in the record showing that the agency acted with a specific, malicious intent to harm Care+Wear. We find that Care+Wear's assertions, made without supporting evidence, are insufficient to meet the high bar necessary to establish bad faith or bias on the part of government personnel.

The protest is denied.

Thomas H. Armstrong
General Counsel