



Decision

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Matter of: General Services Administration--Reconsideration

File: B-419385.8

Date: September 7, 2022

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DIGEST

Request for reconsideration is denied where the record shows that our Office did not make any legal error when declining to sever cost recovery claims.

DECISION

The General Services Administration (GSA) requests that we reconsider our decision in *Bowhead Mission Solutions, LLC--Costs*, B-419385.7, July 14, 2022, 2022 CPD ¶ 183, where we recommended that Bowhead Mission Solutions, LLC, of Springfield, Virginia, be reimbursed its costs of filing and pursuing protest allegations challenging the issuance of a task order to Manta Group, LLC, of Reston, Virginia, under request for proposals (RFP) No. ID03200029, issued by the agency for global field services. GSA argues that our Office committed a legal error when our decision recommended that the protester be reimbursed all of its protest costs.

We deny the request for reconsideration.

BACKGROUND

On September 9, 2020, the agency issued the RFP against the GSA's One Acquisition Solution for Integrated Services (OASIS) indefinite-delivery, indefinite-quantity contract, in order to procure global fielding services on behalf of the U.S Army. Agency Report (AR), Tab 1, RFP at 2; Combined Contracting Officer's Statement and Memorandum of

Law (COS/MOL) at 4.¹ The selected contractor would provide installation and technical support services for fire and tactical command support systems at various locations throughout the world. RFP, Performance Work Statement (PWS) at §§ 1.0, 1.1, 6.3. The RFP contemplated the award of a fixed-price, time-and-materials hybrid task order to be performed over a 12-month base period, four 12-month option periods, and one 6-month extension period. *Id.* at §§ 6.1, 6.2.

Award would be made on a best-value tradeoff basis considering price and four technical factors, listed in descending order of importance: management approach, staffing, transition-in, and past performance. RFP at 2-5. The RFP advised that the technical factors, when combined, were more important than the price factor. *Id.* at 4.

Six offerors submitted proposals prior to the October 13, 2020, close of the solicitation period. As relevant here, Bowhead was assigned adjectival ratings of “meets” under the management approach, staffing approach, and past performance factors, and an adjectival rating of “exceeds” for the transition-in factor.² AR, Tab 15, Award Memorandum, July 12, 2021, at 20.

The source selection authority (SSA) conducted a tradeoff analysis between Manta Group, Bowhead, and a third offeror. AR, Tab 15, Award Memorandum, July 12, 2021, at 20. Between Manta and Bowhead, the SSA determined that, while Bowhead offered a better transition-in approach, Manta offered a superior management approach and was lower-priced. *Id.* at 21-22. Ultimately, the agency selected Manta for award. *Id.* at 22.

After learning that its proposal was unsuccessful, Bowhead filed a protest with our Office. Protest, July 27, 2021. Bowhead argued that the agency unreasonably evaluated both its and Manta’s proposals, and improperly made the selection decision. *Id.* at 11-32. Prior to the due date for submission of its report, the agency notified our Office that it intended to take corrective action by reevaluating Bowhead’s proposal, reexamining the tradeoff analysis, and making a new award decision. Revised Notice of Corrective Action, Aug. 19, 2021. As a result, our Office dismissed the protest as academic. *Bowhead Mission Sols., LLC*, B-419385.3, Aug. 24, 2021 (unpublished decision).

Using the same technical evaluation panel, the agency reevaluated Bowhead’s proposal, and assigned adjectival ratings of “does not meet” for the management approach and staffing factors, as well as an overall technical rating of “does not meet.” AR, Tab 5, Award Memorandum, Nov. 18, 2021, at 5. Because Bowhead was evaluated as not meeting the technical requirements, Bowhead’s proposal was not

¹ When citing to the agency report, we use the Adobe PDF page numbers.

² The agency used adjectival ratings of “exceeds,” “meets,” and “does not meet” when evaluating technical proposals. AR, Tab 17, Second Tech. Evaluation Report at 2.

included in the agency's second tradeoff analysis. *Id.* at 22. Ultimately, the agency again selected Manta for award. *Id.* at 23-24.

On November 24, 2021, Bowhead filed a protest challenging the reevaluation and award to Manta. Protest, Nov. 24, 2021. Bowhead argued that the agency unreasonably evaluated its and Manta's technical proposals, failed to conduct a price analysis, and improperly conducted the best-value tradeoff analysis. *Id.* at 12-21. Significantly, Bowhead also argued that the SSA failed to reconcile the agency's initial evaluation and reevaluation (i.e., how Bowhead was evaluated as meeting technical requirements in the initial evaluation, but subsequently evaluated as not meeting technical requirements in the reevaluation). *Id.* at 13-14. Five days later, Bowhead filed its first supplemental protest. Bowhead First Supp. Protest. Bowhead largely provided additional argument supporting the allegations raised in its initial protest. *Id.* at 18-57.

On December 29, 2021, the agency filed its report responding to the initial and first supplemental protest allegations. See generally COS/MOL at 19-71. On January 10, 2022, Bowhead filed its second supplemental protest, providing additional challenges to the agency's evaluation of Manta's technical proposal. Bowhead Second Supp. Protest, at 3-38.

The agency then notified our Office that it intended to take corrective action. See Notice of Corrective Action, Jan. 18, 2022; Revised Notice of Corrective Action, Jan. 20, 2022. The agency advised that it would convene a new technical evaluation panel, appoint a new contracting officer, reevaluate Bowhead's and Manta's proposals, reexamine the best-value tradeoff analysis, and make a new award decision. Revised Notice of Corrective Action, Jan. 20, 2022. In light of the proposed corrective action, we dismissed Bowhead's initial and supplemental protests as academic. *Bowhead Mission Sols., LLC, B-419385.4 et al.*, Jan. 25, 2022 (unpublished decision).

On February 9, Bowhead filed a request for recommendation of reimbursement of protest costs with our Office. Req. for Reimbursement at 1. According to Bowhead, the firm raised clearly meritorious protest allegations in its initial and both supplemental protest filings. *Id.* at 5. As an example, Bowhead argued that its allegation regarding the agency's alleged failure to reconcile the initial evaluation and reevaluation was clearly meritorious because the record did not demonstrate that the agency took any effort to reconcile the evaluations. *Id.* at 6.

The agency objected to reimbursing the protester any costs. Resp. to Req. for Reimbursement at 1, 9. The agency argued that none of the protester's initial or first supplemental protest allegations were clearly meritorious because they were speculative, or otherwise inconsistent with the evaluation record. *Id.* at 9-13. The agency then explained that it took corrective action in response to the allegations raised in the second supplemental protest, and argued that these allegations were distinct from the allegations raised in the initial and first supplemental protests. *Id.* at 12-15. Finally, the agency argued that the protester was not entitled to costs for the allegations raised

in the second supplemental protest because the agency took corrective action prior to filing a supplemental report. *Id.* at 17.

The protester responded that the allegations raised in its initial and first supplemental protests were clearly meritorious. Protester's Response at 3. Specifically, Bowhead argued that its allegations related to the agency's alleged failure to reconcile the initial evaluation and reevaluation, failure to conduct a price analysis, and failure to evaluate reasonably Manta's technical proposal were clearly meritorious. *Id.* at 3-9. Bowhead also argued that the challenges to Manta's technical proposal raised in its second supplemental protest were reasonably related to the allegations raised in the initial and first supplemental protest because both sets of allegations stemmed from the same underlying factual assertions. *Id.* at 6-9. Finally, Bowhead argued that it should be reimbursed all of its costs. *Id.* at 10-13.

After reviewing these filings, our Office requested additional briefing from the agency. Specifically, our Office provided the following question:

If our Office finds that Bowhead's argument regarding the change in the agency's evaluation of its proposal (*i.e.* Protest § IV.B, First Supp. Protest § IV.B.1) was clearly meritorious, and that the agency unduly delayed taking corrective action in response to this protest argument, should our Office sever those costs pertaining to Bowhead's challenge to the agency's evaluation of the technical and price proposals of the awardee, Manta Group (*i.e.* Protest §§ IV.C, IV.D, and IV.F, First Supp. Protest §§ IV.C and IV.E, Second Supp. Protest §§ II.A, II.C)?

GAO Req. for Additional Briefing at 1.

On May 25, the agency responded that GAO should sever the costs. Confusingly, GSA reasserted that it took corrective action in response to the second supplemental protest allegations, rather than directly address whether our Office should sever the costs related to Bowhead's challenges to the evaluation of Manta's proposal from costs associated with the firm's challenge to the agency's failure to reconcile its initial evaluation and reevaluation. Agency's Resp. to GAO Req. for Briefing at 4. Instead, GSA argued that the allegations raised in the initial and first supplement protest challenging the agency's evaluation of Manta's proposal were speculative and not based on the contents of Manta's proposal. *Id.* at 7-8. Finally, GSA argued that the costs were severable because any inquiry into the initial or first supplemental allegations would not have led to the discovery of the allegations raised in the second supplemental protest. *Id.* at 12-14.

Bowhead responded that no clear separation existed between any of its protest allegations, and that therefore our Office should decline to sever costs. Protester's Resp. to GAO Req. for Briefing at 2.

On July 14, 2022, our Office recommended reimbursement of the protester's costs. *Bowhead Mission Sols., LLC--Costs*, B-419385.7, July 14, 2022, 2022 CPD ¶ 183. First, our Office explained that our Office will only recommend reimbursement where the protest allegation is clearly meritorious (i.e., where a reasonable inquiry into the allegations would have shown facts disclosing the absence of a defensible legal position). *Id.* at 4. In this regard, our Office determined that Bowhead's allegation that the agency failed to reconcile its initial evaluation and reevaluation was clearly meritorious because the record reflected diametrically opposed evaluation conclusions, and the source selection authority did not seek an explanation of the basis for the discrepancy. *Id.* at 4-7.

Next, our Office examined whether Bowhead's reimbursement should be limited to the clearly meritorious argument, or should be extended to include its other challenges. *Bowhead Mission Sols., LLC--Costs*, *supra* at 7. We explained that our Office will normally recommend reimbursement of all costs, including both successful and unsuccessful allegations, because we generally view all issues concerning the evaluation of proposals to be intertwined (i.e., not severable). *Id.* at 8. As a caveat, we also explained that our Office will limit recovery to costs associated with a particular allegation when the particular allegation is clearly severable from the other issues, so as to constitute a separate protest. *Id.* In this regard, we noted that GSA did not provide us with any basis to conclude that Bowhead's clearly meritorious allegation was severable, and therefore, we recommended that the protester be reimbursed its costs of pursuing all of its allegations. *Id.* at 8 n.5 (explaining that our Office asked GSA to address whether the evaluation challenges could be severed but that the agency's response was not relevant to the issue before us).

DISCUSSION

GSA requests reconsideration of our decision, arguing that our Office committed legal error when declining to sever costs because we did not reasonably ask the agency to address that issue. Req. for Recon. at 3-4. According to GSA, our Office did not ask the agency to address whether Bowhead's challenges to the evaluation of its own proposal were severable from its challenges to the evaluation of Manta's proposal, because Bowhead's challenges to its evaluation were contained in more sections than Section IV.B of the Protest and Section IV.B.1 of the First Supp. Protest as delineated in our question. *Id.* at 4. Instead, GSA argues that it was asked to address whether our Office should sever costs based on the "impact of corrective action." *Id.* Further, GSA argues that it is not responsible for paying costs because it opted to take corrective action to address the allegations raised in the second supplemental protest, and notified us that it would do so prior to the submission of its supplemental report. *Id.* at 8.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(c). Additionally, the repetition of arguments made during our consideration of the original protest and disagreement with our prior decision do not

meet this standard. *People, Technology and Processes, LLC--Recon.*, B-418781.5, Sept. 23, 2021, 2021 CPD ¶ 320 at 4. On this record, we disagree that our Office committed any legal error when declining to sever cost recovery claims due to the agency's failure to respond meaningfully to our request for additional briefing.

First, we find that our question reasonably asked GSA to address the severability of Bowhead's challenges to the evaluation of Manta's proposal. Although our request did not identify every section where Bowhead raised challenges to the agency's evaluation of its proposal, it still plainly instructed GSA to assume that we found one of Bowhead's challenges to its evaluation to be clearly meritorious, and then to address whether we should sever the cost recovery claims associated with Bowhead's challenges to the evaluation of Manta's proposal. See GAO Req. for Additional Briefing. Contrary to GSA's position, the question did not instruct the agency to articulate why the cost recovery claims associated with the firm's second supplemental protest should be severed from all other claims due to the "impact of corrective action." See Req. for Recon. at 4.

Second, we find that GSA failed to respond meaningfully to our question. Our review shows that GSA argued that Bowhead's cost recovery claims should be severed between those cost recovery claims associated with its initial and first supplemental protest, and those claims associated with the firm's second supplemental protest. Agency's Resp. to GAO Req. for Briefing at 4. GSA also argued that Bowhead was not entitled to any costs because the agency took corrective action in response to the protest allegations raised in the second supplemental protest. *Id.*

Further, our review shows that GSA attempted to demonstrate that Bowhead's allegations raised in the initial and first supplemental protests challenging Manta's evaluation were based on different information than the allegations raised in the second supplemental protest. Agency's Resp. to GAO Req. for Briefing at 5-10. Finally, our review shows that GSA argued that no common core set of facts existed between the allegations raised in the initial and first supplemental protest, and the second supplemental protest. See, e.g., *id.* at 13 ("Protestor's theory regarding the Agency's evaluation of Manta's price proposal in its initial and first Supplemental Protest and Protestor's second Supplemental Protest don't even share the same title, let alone a common core of facts.").

Thus, we do not find that our Office committed any legal error because we reasonably asked the agency to address a particular severability issue, and GSA did not meaningfully respond to that request. Under such circumstances, we think our Office reasonably applied the general rule that all issues concerning the evaluation are intertwined (i.e., not severable), since GSA provided us with no reasonable basis to conclude otherwise. See *Bowhead Mission Sols., LLC--Costs, supra* at 8; see also *Ruchman and Assocs., Inc.--Costs*, B-419968.3, Mar. 10, 2022, 2022 CPD ¶ 76 at 8 ("[W]e generally consider all issues concerning the evaluation of proposals to be intertwined and thus not severable; therefore, we will generally recommend

reimbursement of the costs associated with both successful and unsuccessful challenges to an evaluation.”).³

To the extent GSA contends that our Office committed legal error by not recognizing that the agency took corrective action in response to the allegations raised in the second supplemental protest, we do not find that argument provides us with any basis to grant reconsideration. *See Req. for Recon.* at 8. Indeed, as noted above, this argument repeats arguments made in its response to the protester’s request for reimbursement, and its response to our request for additional briefing. *See People, Technology and Processes, LLC--Recon., supra* (repetition of arguments previously made does not provide a basis to grant reconsideration).

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel

³ Alternatively, if GSA objects to our conduct of our review of the request for a recommendation for reimbursement in that our Office did not ask the correct legal question (i.e., whether the protest allegations were severable as opposed to which allegations prompted the agency’s corrective action), we do not think that argument constitutes a valid basis for reconsideration; indeed, simply arguing that our Office did not ask the appropriate legal question in developing the underlying record does not demonstrate that the decision at-issue contains any factual or legal error.