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Decision

Matter of: CACI, Inc- Federal

File: B-422226.3

Date: May 24, 2024

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Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation of reimbursement of the costs of filing and pursuing prior protests is denied where the agency did not unduly delay taking corrective action in response to a clearly meritorious protest and where the agency took prompt corrective action in response to supplemental protest arguments.

DECISION

CACI, Inc.-Federal (CACI), of Chantilly, Virginia, requests that our Office recommend that it be reimbursed the reasonable costs of filing and pursuing its protests (B-422226, B-422226.2) challenging the award of a contract to Professional Analysis, Inc. (PAI), of Alexandria, Virginia, by the Department of the Navy, Military Sealift Command, under request for proposals (RFP) No. N3220523R4140 for worldwide logistics services. The protester argues that our Office should recommend the Navy reimburse the firm its protest costs because the agency unduly delayed taking corrective action in response to CACI's protest.

We deny the request.

BACKGROUND

The agency issued the RFP on May 26, 2023, using the combined procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, to award a fixed-price contract with a period of performance consisting of a base year and four option years. Agency Report (AR), Tab 1, RFP at 6-7, 63. The RFP stated that proposals would be evaluated

under the following factors: technical approach; past performance; price; and small business participation commitment document. *Id.* at 74. The technical approach factor included the following subfactors: organizational experience; understanding to the sample problems 1, 2, 3, 4 and 5; and management approach and personnel experience. *Id.* The RFP further stated that all factors and subfactors would be evaluated on an acceptable or unacceptable basis, and award would be made using a lowest-price technically acceptable methodology. Specifically, the RFP stated: “Best value will result from the selection of the technically acceptable proposal with acceptable past performance and an acceptable small business participation commitment document and the lowest evaluated price.” *Id.* at 73.

The agency received timely proposals from two offerors, CACI and PAI. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 1-2. The agency evaluated both proposals and engaged in two rounds of discussions with offerors. *Id.* at 4. In the final evaluation, both offerors received ratings of acceptable in all factors and subfactors; CACI’s price was \$84,210,297 and PAI’s price was \$74,392,335. *Id.* The agency awarded a contract to PAI on November 3. *Id.* at 5. Following its receipt of a debriefing, on November 27, CACI filed a protest with our Office.

In its protest, CACI raised several allegations. CACI primarily argued that the agency unreasonably evaluated PAI’s proposal under the technical approach factor’s organizational experience and the management approach and personnel experience subfactors. Protest at 16-29. CACI also argued the evaluation of PAI under the past performance and price factors was unreasonable. *Id.* at 29-34. CACI further argued that PAI was a large business and challenged the agency’s evaluation of and PAI’s compliance with the RFP’s small business participation commitment document requirements. *Id.* at 35-36. Finally, CACI alleged that the selection decision was flawed as a result of the foregoing errors. *Id.* at 36-37.

On December 1, the agency requested that our Office dismiss the protest in its entirety, arguing that the allegations were speculative and failed to state a valid basis of protest as required by our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f). Req. for Dismissal at 1-17. On December 12, our Office advised that we agreed with the agency in part and dismissed the protest allegations related to the agency’s evaluation of PAI under the management approach and personnel subfactor, and the past performance and price factors. Electronic Protest Docketing System No. 17, GAO Notes (citing Protest at 23-34). On December 27, the agency filed its report.

On January 8, 2024, the protester and intervenor filed their comments. In its comments, the protester withdrew its allegations related to the agency’s evaluation of, and PAI’s compliance with, the RFP’s small business participation commitment document requirements. Comments & Supp. Protest at 1, 19. The protester also raised two supplemental protest grounds as follows: (1) PAI’s technical proposal improperly exceeded the RFP’s 50-page limit by 13 pages; and (2) the agency’s evaluation of PAI under the organizational experience subfactor was unreasonable and contrary to the RFP. *Id.* at 19-23.

On January 10, the agency informed our Office that it would take corrective action and requested that we dismiss the protest. Notice of Corrective Action at 1. The contracting officer stated the agency would take the following corrective action:

- a. Amend the solicitation to (i) provide clarity with regard to the proposal instructions and evaluation criteria and (ii) request a revised technical volume and a revised price volume from all offerors.
- b. Evaluate all timely received revised proposals or confirmation of previous submissions in response to the amended solicitation, and prepare new source selection documentation.
- c. Based on the source selection decision, either re-affirm the awarded contract, as modified by any changes in the proposal, or terminate the awarded contract and award a new contract.

Contracting Officer Corrective Action Statement at 1. We concluded that the agency's proposed corrective action rendered the protest academic, and therefore dismissed the protest. *CACI, Inc.-Federal*, B-422226, B-422226.2, Jan. 19, 2024, at 2 (unpublished decision). This request for a recommendation that the agency reimburse CACI's costs of filing and pursuing its protests followed.

DISCUSSION

CACI requests that our Office recommend reimbursement of the costs of pursuing all its protest grounds. The requester argues that its initial protest allegations challenging both the evaluation of PAI under the organizational experience subfactor and the selection decision were clearly meritorious, and that the agency unduly delayed taking corrective action in response to these protest grounds. Req. for Recommendation of Costs at 1, 5-6. The protester further contends that a reasonable investigation into its allegations should have led the agency to discover the “patently obvious” violation of the solicitation’s 50-page limit on technical proposals by PAI prior to the filing of the agency report, and failure to do so renders the agency’s corrective action unduly delayed with respect to this protest ground. *Id.* at 1, 7-9.

The agency argues that the request should be denied because the initial protest grounds were not clearly meritorious and are otherwise severable from the supplemental protest allegations. Resp. to Req. for Reimbursement at 3-6. The agency further argues that reimbursement for the supplemental protest should be denied because the agency did not unduly delay taking corrective action in response to this particular protest ground. *Id.* at 6.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs under 4 C.F.R. § 21.8(e) if we determine that the agency unduly delayed taking corrective action in the face of a

clearly meritorious protest. *East Coast Nuclear Pharmacy--Costs*, B-412053.5, Aug. 31, 2016, 2016 CPD ¶ 249 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. *Octo Consulting Grp., Inc.--Costs*, B-414801.4, Dec. 14, 2017, 2018 CPD ¶ 52 at 3. This principle is intended to prevent inordinate delay in investigating the merits of a protest and taking corrective action once an error is evident, so that a protester will not incur unnecessary effort and expense in pursuing its remedies before our Office. *Id.* Where an agency takes corrective action by the due date of the agency report, we generally regard the action as prompt and will not recommend reimbursement of protest costs. *Abhe & Svoboda, Inc.--Costs*, B-412504.2, Apr. 1, 2016, 2016 CPD ¶ 99 at 3.

The determination of whether to recommend the reimbursement of costs rests on the factual and legal posture of each individual protest, which must be analyzed on a case-by-case basis. *JRS Staffing Servs.--Costs*, B-410708.3, Nov. 9, 2015, 2015 CPD ¶ 349 at 5. In essence, a finding by our Office that an argument was clearly meritorious means that we would have sustained the protest had we issued a decision on the merits, and that such a decision would not have been a “close call.” *Piraeus Int'l, Inc.--Costs*, B-420363.3, Apr. 11, 2022, 2022 CPD ¶ 158 at 11. As discussed below, we find that that none of the initial protest allegations were clearly meritorious, and the agency took prompt corrective action in response to the supplemental protest.

First, as noted, prior to filing its report, the agency requested that we dismiss the protest in its entirety. In this regard, we agreed with the agency that the protest allegations challenging the agency’s evaluation under the management approach and personnel experience subfactor, and the past performance and price factors, were speculative and failed to state a valid basis of protest. The agency report did not include a response to these allegations because our Office dismissed them prior to the due date for the agency report, therefore CACI did not expend any additional time or resources pursuing them.

Our Bid Protest Regulations 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. 4 C.F.R. § 21.1(c)(4) and (f). 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.

With regard to these dismissed protest grounds, under the management approach and personnel experience subfactor, the RFP required that offerors provide information regarding the offeror’s strategy and plans to attract qualified key personnel and retain and train qualified personnel; how all contractor functions would be covered at all times; an organizational chart for its complete staffing approach; and a certification that the contractor would provide the minimum personnel with the minimum qualifications in the performance work statement (PWS). RFP at 70-71. Under the separate organizational

experience subfactor, the RFP required offerors to submit relevant maritime organizational experience performing work similar in scope, size and complexity to the PWS, and could include federal, state or local government or commercial contracts of the offeror and its proposed subcontractors, team members, or other related entities. RFP at 69.

However, CACI argued that the agency should have found PAI's proposal technically unacceptable under the management approach and personnel experience subfactor based on its alleged lack of experience but did not provide any facts to demonstrate that PAI could not have provided the information required by the RFP. See Protest at 24 ("PAI has no relevant experience supporting a contract of this size, scope, and complexity and thus necessarily lacks the required capabilities to recruit and retain the minimum amount of qualified personnel needed to fully staff the [] contract."). Specifically, CACI argued that PAI could not attract and retain the required personnel because its website "currently has *over 24 open positions* related to its current government contracts, half of which have been *posted and unfilled for over six months.*" *Id.* In addition, CACI argued that PAI proposed to retain incumbent personnel but would force them to accept a pay cut, without the necessary incentives to retain personnel, as evidenced by PAI's significantly lower price. *Id.* at 27-29.

We concluded that these allegations were speculative because neither the information on PAI's website (*e.g.*, active recruitment of personnel, list of personnel benefits) nor CACI's characterization of PAI's price as significantly lower, without more, provided a sufficient basis to demonstrate that PAI could not have included information in its proposal sufficient to be found technically acceptable. See *Mark Dunning Indus., Inc.*, B-413321.2, B-413321.3, Mar. 2, 2017, 2017 CPD ¶ 84. Moreover, CACI's challenge to the evaluation under the management approach and personnel experience subfactor conflated the requirements of the separate organizational experience subfactor, which required offerors to demonstrate their experience. In contrast, the management approach and personnel experience subfactor did not require offerors to demonstrate their experience but rather to provide a forward-looking plan to properly recruit for and staff the contract. Accordingly, CACI's arguments failed to state a valid basis of protest as the RFP did not require the agency to review an offeror's experience under this subfactor.

Regarding the protester's challenge to the agency's evaluation of PAI under the past performance factor, CACI argued that government contracts performed by PAI indicated that it lacked recent and relevant past performance and PAI's proposal should have affirmatively stated that it did not possess recent and relevant past performance for the government to consider. Protest at 29-31. Yet, CACI also argued that the agency should have considered PAI unacceptable due to adverse past performance information that was "close-at-hand."¹ *Id.* GAO concluded that these arguments were likewise

¹ We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on an offeror's
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speculative and failed to state a valid basis of protest. Here, the RFP did not limit past performance examples to contracts with the government and permitted offerors to submit up to three previous commercial contracts or subcontracts whose effort was recent and relevant. RFP at 71. Insofar as CACI's arguments were based solely on government contracts performed by PAI, these arguments again failed to demonstrate that PAI could not have included information in its proposal to be found technically acceptable.²

Regarding the agency's evaluation of PAI under the price factor, CACI argued that the agency failed to assess whether PAI included pricing for all elements of the cost of performance. Protest at 32-34. For example, CACI argued that the agency failed to confirm whether PAI's price included PAI's complete staffing approach or pricing for training, onboarding time, and unproductive labor hours. *Id.* at 33. CACI further asserted that because PAI lacked the requisite experience, coupled with its "lowball price," PAI's price must not have included all of the necessary cost elements. *Id.* at 34. We dismissed this argument because it did not reflect the price evaluation that was required by the RFP and therefore failed to state a valid basis.

Here, the RFP stated that price would be evaluated using the price analysis techniques in FAR section 15.404-1, and that while the agency would evaluate "each and every price" it "may only determine that the lowest error-free price submitted is fair and reasonable." RFP at 75. Thus, the RFP contemplated an evaluation of whether the

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past performance when it is "too close at hand" to require the offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. Our Office has generally limited application of this principle to situations where the alleged "close at hand" information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. *See, e.g., Knowlogy Corp.*, B-416208.3, Dec. 20, 2018, 2018 CPD ¶ 47 at 5-6. According to the protester, "PAI has a history of poor performance under a prior [Military Sealift Command] award," but does not specifically identify the prior award to which it refers. Protest at 30.

² The protester also argued: "But even if PAI did not 'affirmatively state' that no recent and relevant past performance exists, PAI should not have been rated 'acceptable.'" Protest at 30. In this regard, the RFP stated that an offeror without recent and relevant past performance should "affirmatively state that it does not have recent and relevant past performance for the Government to consider," and in such an instance would be "determined to have unknown (or neutral) past performance." RFP at 75. The protester's arguments cannot both be true. In other words, if PAI's poor past performance is not relevant, and the protester never claimed it was relevant, then it cannot form the basis for a rating of unacceptable. Therefore, for this additional reason CACI's arguments failed to state a valid basis because PAI would not have been rated as unacceptable under the terms of the RFP.

total price was fair and reasonable and not an in-depth look at whether the price included all of the elements of the cost of performance.³ Given this evaluation criteria, CACI's argument that PAI's alleged lack of experience and "lowball price" must mean PAI's price did not include all of the cost elements for performance did not state a valid basis of protest.⁴

Accordingly, we do not consider the allegations dismissed by our Office prior to the agency report due date to be clearly meritorious. As explained, our Office will recommend that an agency reimburse protest costs where the agency unduly delays taking corrective action in response to an argument that was clearly meritorious. A protest argument that was dismissed prior to the due date for the agency report, therefore, cannot be viewed as clearly meritorious because it did not provide any basis for our Office to have sustained the protest. For these reasons, we find no basis to recommend that the agency reimburse the requester's costs concerning allegations that were dismissed prior to the agency report due date.

Further, our Office does not recommend reimbursement of costs for withdrawn protest grounds. *Odyssey Sys. Consulting Grp., Ltd.--Costs*, B-419730.5, Sept. 30, 2021, 2021 CPD ¶ 335 at 7; see, e.g., *Hughes Coleman JV--Costs*, B-417787.4, Apr. 15, 2020, 2020 CPD ¶ 250 at 5 (denying costs where protest grounds were withdrawn); *Spry Methods, Inc.--Costs*, B-417800.3, Feb. 14, 2020, 2020 CPD ¶ 83 at 10 (granting costs for all protest grounds except for the withdrawn ground). Here, in response to the agency report, the protester withdrew its allegations challenging the agency's evaluation of and PAI's compliance with the RFP's small business participation commitment document requirements. Thus, we find no basis to recommend reimbursement of CACI's costs of pursuing its withdrawn protest grounds. *Booz Allen Hamilton, Inc.--Costs*, B-420116.4, B-420116.5, July 27, 2022, 2022 CPD ¶ 194 at 8.

³ CACI contends that the RFP required that each offeror's proposal "must demonstrate an understanding of, and ability to meet, all of the requirements set forth in the [PWS]" and that this meant the agency was "required to evaluate whether PAI's price proposal included the requisite number and type of positions, number of personnel in each position, and number of hours within each year per position as proposed in PAI's technical proposal." Protest at 33 (citing RFP at 78). However, this language was located in the section of the RFP informing offerors what their proposals must include and address, not what the agency was required to evaluate. Accordingly, this language does not support CACI's argument that the agency's price evaluation was unreasonable.

⁴ To the extent CACI was arguing that the agency had to evaluate whether PAI's price was so low it indicated a lack of understanding of the requirements or introduced risk of poor performance, this is an argument that the agency failed to conduct a price realism analysis, which the RFP did not require.

Regarding the remaining allegations, we conclude that the initial protest grounds that were not dismissed or withdrawn were not clearly meritorious, and that the agency took prompt corrective action in response to the supplemental protest. CACI's principal protest argument was that the agency should not have found PAI to be technically acceptable under the organizational experience subfactor because it lacked the requisite experience, citing two contracts awarded to PAI by the agency and arguing that the scope of work under these smaller contracts did not demonstrate experience required under a variety of task areas included in the RFP, and that PAI lacked experience similar in size, scope and complexity to the PWS. Protest at 16-22. In its report, the agency refuted the protester's characterization of PAI's experience, and argued that the collective experience of PAI and its subcontractors provided in its proposal demonstrated experience similar in size, scope, and complexity to the RFP requirements. COS/MOL at 8-11.

As noted, the RFP required that offerors provide relevant maritime organizational experience performing work similar in scope, size, and complexity to the requirement, but did not limit organizational experience to federal government contracts.⁵ Rather, the RFP stated:

Organizational experience may be, but is not limited to contracts with federal, state or local government or commercial contracts. If the Offeror's relevant experience is through a subcontracting, teaming, joint venture arrangement, or other entity, the Offeror must be specific as to what tasks were accomplished by the other entity and the specific nature of the organizational relationship with the Offeror.

RFP at 69. The RFP identified eight kinds of experience to be included, such as ship lifecycle logistics support, material and ordnance handling equipment support, and supply chain support. *Id.* The RFP stated that organizational experience would be evaluated on an "acceptable" or "unacceptable" basis, based on whether the offeror provided sufficient detail to support the requirements, and that to be considered technically acceptable, the proposal should meet the solicitation requirements including terms and conditions stated in the solicitation and instructions to offerors. *Id.* at 74.

The record shows that in its proposal, PAI included information regarding its experience performing contracts for different Naval entities as well as information regarding the experience of its "highly qualified small business partners." See AR, Tab 53, PAI Technical 2nd Final Proposal Revision at 1-37. In its initial evaluation of PAI, the agency assigned a rating of unacceptable, and identified discrete aspects of some PWS areas where it found the proposal did not meet the requirements. AR, Tab 59,

⁵ The RFP included the following definitions: "Scope - type of work (e.g., work as identified in the PWS)"; "Size - customer, contract duration and value"; and "Complexity - performance challenges (e.g., personnel worldwide, dynamic ship schedules, operational readiness)." RFP at 69.

Consolidated Technical Evaluation Report at 1. The agency identified these concerns in discussion letters sent to PAI and permitted PAI to submit final proposal revisions. AR, Tabs 63-65, PAI Discussions Letters; Tab 53, PAI Technical 2nd Final Proposal Revision. The agency noted that in its final proposal revision, PAI had inserted the areas of concern identified by the agency in the discussion letters and “submitted a paragraph by paragraph detailed explanation describing their experience and management approach” in those areas, and thereafter concluded that PAI’s proposal was acceptable. AR, Tab 59, Consolidated Technical Evaluation Report at 1-5. Thus, the record showed that the evaluators concluded the collective experience of PAI and its partners met the RFP requirements in terms of scope, size, and complexity to the eight functional areas in the PWS. *Id.* The agency argued that its evaluation was reasonable, and that contrary to CACI’s arguments, the RFP did not require that offerors demonstrate organizational experience in a single project. COS/MOL at 8-11.

In its comments, CACI continued to argue that PAI did not include all the required information to support the agency’s conclusion that PAI was technically acceptable, and further argued that the agency’s evaluation was inadequately documented. Comments & Supp. Protest at 3-18. In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. *Interactive Info. Solutions, Inc.*, B-415126.2 *et al.*, Mar. 22, 2018, 2018 CPD ¶ 115 at 7. Rather, we will review the record only to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* A protester’s disagreement with the agency’s judgment, without more, does not establish that the evaluation was unreasonable. *Consolidated Eng’g Servs., Inc.*, B-311313, June 10, 2008, 2008 CPD ¶ 146 at 6.

We do not find the protester’s challenges here to be clearly meritorious. In this regard, the record demonstrates that the agency reviewed the organizational experience provided by PAI in its proposal, including the additional information received from PAI during discussions that addressed its concerns about PAI’s initial proposal. While the protester disagrees with the agency’s conclusions and argues that the agency should have applied more scrutiny and failed to adequately document its conclusions, we find that this argument amounts simply to disagreement with the evaluation and is insufficient to establish that the agency’s evaluation was unreasonable.

Moreover, the record shows that the agency had a defensible legal position in response to these arguments. Here, as noted, the RFP did not require that an offeror demonstrate its organizational experience in a single project or contract. Rather, the RFP identified eight kinds of maritime experience offerors were required to demonstrate, and stated that relevant experience demonstrated through a subcontracting, teaming, joint venture arrangement, or other entity, must specify the tasks accomplished by the other entity and the specific nature of the organizational relationship with the offeror. RFP at 69.

The protester also argued that the underlying evaluation flaws led to an unreasonable selection decision. Protest at 36-37. The agency argued that the selection decision was reasonable and in accordance with the RFP, which stated that award would be made using a lowest-price technically acceptable methodology. COS/MOL at 11-12. As discussed, after CACI's other allegations were dismissed or withdrawn, the only remaining challenges related to the agency's evaluation of PAI's organizational experience, and the selection decision. Since the protester's challenge to the selection decision was derivative of this foregoing allegation, we likewise find the allegation was not clearly meritorious, and that the agency had a defensible legal position--*i.e.*, its evaluation of PAI's organizational experience was reasonable and award was properly made to PAI's lowest-price technically acceptable proposal. Therefore, we do not recommend that CACI be reimbursed its costs for filing and pursuing these allegations.

Finally, in its supplemental protest, filed on January 8, 2024, CACI argued that the agency had improperly permitted PAI to exceed the 50-page limit in its final proposal revision. Comments & Supp. Protest at 19-20. CACI also raised additional challenges to the agency's evaluation of PAI under the organizational experience subfactor, although these arguments were substantially the same as the arguments made in its initial protest and comments. *Id.* at 21-23.

However, on January 10, the agency filed its notice of corrective action prior to our Office establishing a due date for the agency to respond to supplemental protest allegations. As noted, we generally consider corrective action to be prompt if it is taken prior to the due date for filing the agency report. *Abhe & Svoboda, Inc.--Costs, supra*. Accordingly, we find no basis to recommend that the requester be reimbursed its costs of filing and pursuing these allegations.⁶

The request is denied.

Edda Emmanuelli Perez
General Counsel

⁶ To the extent the protester contends that corrective action was unduly delayed because the agency should have identified this procurement error prior to filing its report, we disagree. An agency is not obligated to perform a *de novo* review of its procurement record in response to a protest or review the record for potential supplemental grounds to take preemptive corrective action. As noted, the agency took corrective action within two days of the supplemental protest; therefore, we find that corrective action was not unduly delayed. *Abhe & Svoboda, Inc.--Costs, supra*.