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# Decision

**Matter of:** Delphinus Engineering, Inc.--Costs

**File:** B-423203.3

**Date:** July 14, 2025

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## DIGEST

1. Request that GAO recommend reimbursement of protest costs is granted where initial protest arguments challenging the best-value tradeoff decision were clearly meritorious and where the agency unduly delayed taking corrective action.
  2. Reimbursement of costs are not recommended with respect to issues concerning the agency's technical evaluation, cost evaluation, or the allegation of misleading discussions where such issues were not clearly meritorious and are readily severable from the challenge to the agency's best-value tradeoff decision.
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## DECISION

Delphinus Engineering, Inc. (Delphinus), a small business of Newton Square, Pennsylvania, requests that our Office recommend reimbursement for the reasonable costs of filing and pursuing its protest. The requester challenged the award of a contract to Prism Maritime, LLC (Prism), a small business of Chesapeake, Virginia, under request for proposals (RFP) No. N6339422R0510, issued by the Department of the Navy, Naval Surface Warfare Center, for alteration installation team (AIT) services and in service engineering agent support. Delphinus argues that the Navy unduly delayed taking corrective action in the face of a clearly meritorious protest.

We grant the request.

## BACKGROUND

The Naval Surface Warfare Center, Port Hueneme Division (NSWC PHD), supports a variety of programs in its mission as the in-service engineering agent. Agency Report (AR), Tab 2, RFP at 24.<sup>1</sup> The instant requirement is for AIT services to NSWC PHD onboard ships and land-based facilities, including government laboratories. *Id.* AIT services include tasks such as installation and engineering support, removal and modification of equipment or systems, welding, rigging, and fire watch. *Id.* at 24-25.

On October 28, 2021, the Navy issued the RFP as a small business set-aside under the procedures of Federal Acquisition Regulation (FAR) part 15. RFP at 1; Contracting Officer's Statement (COS) at 1. The solicitation contemplated the award of a cost-plus-fixed-fee contract with a 1-year base period and four 1-year option periods. RFP at 6-18, 149.

Award would be made on a best-value tradeoff basis considering the following evaluation factors: (1) technical capability; (2) management approach; (3) past performance; and (4) cost. *Id.* at 155. The technical capability factor was considered more important than the management approach factor and the past performance factor, and significantly more important than cost. *Id.* Relevant here, the technical capability factor was divided into the following three elements: (A) technical approach; (B) staffing plan; and (C) key personnel. *Id.* at 155-157.

Proposals were initially due on January 7, 2022. *Id.* at 1. The Navy received multiple proposals by the submission deadline, including proposals from Delphinus and Prism, and the agency opened discussions with all offerors. COS at 1. Final proposal revisions (FPR) were due on November 1, 2023. *Id.*

The Navy determined that Prism's proposal was technically superior to Delphinus's proposal largely due to Prism's experience with industrial installation efforts and its ability to support warehousing and industrial support, and that Prism's technical superiority was worth the associated price premium. AR, Tab 6, Source Selection Decision Document (SSDD) at 4-8. Ultimately, the agency made award to Prism. On December 2, Delphinus filed the underlying protest with our Office.

Delphinus's protest raised the following challenges: (1) the evaluation of Delphinus's proposal under the technical approach element of the technical capability factor did not properly recognize Delphinus's relevant experience and unreasonably consolidated multiple advantageous aspects of its proposal into a single strength; (2) the Navy disparately evaluated proposals under the technical approach element and the staffing plan element; (3) the Navy should have recognized more strengths in Delphinus's proposal under the technical capability factor; (4) the Navy improperly escalated

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<sup>1</sup> Citations to the protest record and pleadings refer to filings in the underlying protest (B-423203, B-423203.2). Unless otherwise noted, all citations reference the Adobe PDF page numbers of the documents.

Delphinus's proposed costs in a manner contrary to the terms of the RFP; (5) the Navy engaged in misleading discussions; and (6) the best-value decision was flawed. See Protest at 21-35.

On December 23, the Navy filed its agency report defending its evaluation and award decision. Memorandum of Law (MOL) at 2. On January 2, 2025, Delphinus filed comments on the agency report and raised supplemental protest grounds. First, Delphinus advanced an additional allegation of disparate treatment under the technical approach element of the technical capability factor. Comments & Supp. Protest at 34-39. Second, Delphinus argued that the agency's position regarding the evaluation under the technical approach element and the escalation of Delphinus's proposed costs revealed a latent ambiguity in the solicitation. *Id.* at 40-41. Third, Delphinus argued that the Navy had engaged in unequal discussions by coaching Prism on how to prepare its FPR under the technical approach element but failing to provide Delphinus with the same level of detail during discussions. *Id.* at 41-42 (citing AR, Tab 9.1, Prism Technical Proposal at 6). The Navy's deadline to file a supplemental agency report was January 10.

On January 3, in response to a request by Delphinus, GAO instructed the Navy to file less redacted copies of certain agency report documents. Resolution of Second Document Dispute. On January 6, the Navy produced the less redacted documents and requested an extension of time to file its supplemental agency report. Req. for Extension. GAO granted the extension and set an updated deadline of January 15.

On January 10, Delphinus filed "supplemental comments" based on the agency's supplemental production of the less-redacted documents.<sup>2</sup> Supp. Comments at 1. That same day, the Navy filed a notice of corrective action. The notice of corrective action stated:

After receipt of the supplemental protest, the Navy reviewed the source selection record and subsequently identified issues related to the Navy's best value trade off analysis that were reflected in the source selection documentation, and potentially impacted the source selection process. In particular, the Navy identified issues with regard to how the additional strength assigned to the awardee in [the technical capability factor, technical approach element] factored into the best value tradeoff analysis.

Notice of Corrective Action at 1. On January 17, our Office dismissed the protest as academic. On January 24, Delphinus filed the instant request with our Office.

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<sup>2</sup> The requester expressly noted that its supplemental comments were not intended to be supplemental protest grounds. Supp. Comments at 2 n.2.

## DISCUSSION

Delphinus requests that we recommend reimbursement of the costs of filing and pursuing its protest. The Navy contends that reimbursement is not warranted because the initial protest arguments were not clearly meritorious, and because the Navy took timely corrective action in response to the supplemental protest arguments.

As discussed below, we agree with Delphinus that its initial protest was clearly meritorious, and that the agency did not take prompt corrective action. In this regard, a reasonable inquiry by the Navy into the protest allegations would have revealed the Navy's best-value tradeoff decision relied on the incorrect conclusion that only Prism's proposal contained a strength based on experience in industrial installation efforts and the ability to support warehousing and industrial support. Delphinus's initial protest allegations--that the agency erroneously assessed strengths to the proposals under the technical approach element and that these errors impacted the best-value decision--pointed the Navy to the exact area of the record which proved problematic. We therefore recommend reimbursement of costs associated with Delphinus's challenge to the Navy's best-value tradeoff decision. We do not recommend reimbursement of costs for the remaining protest grounds.

When an agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs if, based on the record, we determine that the 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 to obtain relief. 4 C.F.R. § 21.8(e); *AAR Aircraft Servs.--Costs*, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5-6. Generally, as long as an agency takes corrective action in response to a protest by the due date of the agency report, we regard such action as prompt and will not grant a request to recommend reimbursement of costs. *Alsalam Aircraft Co.--Costs*, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 at 3.

A protest is clearly meritorious where it is not a "close question," e.g., where a reasonable inquiry by the agency into the protest allegations would have revealed facts showing the absence of a defensible legal position. *Centurum, Inc.--Costs*, B-415070.2, Mar. 8, 2018, 2018 CPD ¶ 106 at 4; *InfraMap Corp.--Costs*, B-405167.3, Mar. 26, 2012, 2012 CPD ¶ 123 at 3; *First Fed. Corp.--Costs*, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2. The fact that an agency decides to take corrective action does not necessarily establish that the protest was clearly meritorious, i.e., that the agency did not have a defensible legal position. *Triple Canopy, Inc.--Costs*, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3.

As a general rule, a protester should be reimbursed its incurred costs with respect to all the issues pursued, not merely those upon which it has prevailed. *The Salvation Army Cmty. Corr. Program--Costs*, B-298866.3, Aug. 29, 2007, 2007 CPD ¶ 165 at 7. 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. *Burns & Roe Servs. Corp.--Costs*, B-310828.2, Apr. 28, 2008, 2008 CPD ¶ 81 at 3. In making this determination, we consider, among other things, the extent to which the claims are interrelated or intertwined, e.g., whether the successful and unsuccessful claims share a common core set of facts, are based on related legal theories, or are otherwise not readily severable. See *Sodexho Mgmt., Inc.--Costs*, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 29.

#### Reimbursable Issue: Challenge to the Best-Value Tradeoff Decision

In its initial protest, Delphinus argued that the Navy conducted a flawed best-value tradeoff. Protest at 35. As noted, the agency took corrective action only after Delphinus had filed comments on the agency report, a supplemental protest, and supplemental comments responding to the agency's supplemental document production.

As explained in more detail below, we find that the Navy failed to take prompt corrective action in response to a clearly meritorious protest. The clearly meritorious protest issue involved the Navy's identification of discriminators in favor of selecting the awardee's proposal in its best-value tradeoff decision even though the Navy had identified the same strengths for the protester's proposal. In short, the record demonstrates that Delphinus and Prism were each assessed a strength based on their experience with industrial installation efforts and their ability to support warehousing and industrial support. The agency found Prism's strength to be a discriminator, but in making the best-value tradeoff decision, the agency did not discuss how Prism's strength was somehow better than, or distinguishable from, Delphinus's strength. Below, we explain the strengths assessed to the proposals and then explain the meritorious protest issue.

The record demonstrates that under the technical approach element of the technical capability factor Delphinus earned one strength while Prism earned two. AR, Tab 3, Source Selection Evaluation Board (SSEB) Report at 9-10, 13-14; AR, Tab 5, Source Selection Advisory Council (SSAC) Report at 9-12; AR, Tab 6, SSDD at 3. Delphinus's strength included recognition for experience in AIT installations, industrial services and project support for installation efforts, warehousing, having access to industrial shops, and the ability to perform industrial services. AR, Tab 3, SSEB Report at 9-10; AR, Tab 5, SSAC Report at 9. In contrast, Prism received one strength for its understanding of maintaining a qualified workforce and a second strength for demonstrating "expert knowledge and experience to perform industrial services and project support for industrial installation efforts[.]" and project support for warehousing and industrial shops. AR, Tab 3, SSEB Report at 13-14; AR, Tab 5, SSAC Report at 11-12.

The source selection authority (SSA) agreed with the underlying evaluation and the strengths assessed to the competing proposals under the technical approach element. AR, Tab 6, SSDD at 5. In the SSDD, the SSA discussed the strength assessed to Delphinus's proposal for its relevant AIT experience before noting one of the strengths assessed to Prism's proposal was based on "a similar rationale[.]" *Id.* (Referring to

Prism's "qualified AIT workforce, including tiger teams" and determined that this strength provided an equal amount of benefit as compared to Delphinus's strength.).

Salient here, the SSA noted that Prism earned a second strength under the technical approach element. *Id.* The SSA stated that Prism's second strength was assessed for its ability to "perform installation efforts that are notably similar to those of this requirement, including its experience in industrial installation efforts and its ability to support warehousing and industrial support." *Id.* The SSA determined that Prism's second strength was beneficial to the government because "it flattens the installation learning curve, increases ability to meet tight industrial schedules, and decreases likelihood of negatively impacting the overall shipyard schedule." *Id.* Ultimately, this additional strength became a significant factor in the best-value decision. *Id.* at 6 ("Prism's added strength in [the technical approach element] related to industrial services and installation efforts represents an advantage over Delphinus"), 7 ("the added technical benefit gained in [the technical approach element] of Prism's proposal more than outweighs the smaller advantages of Delphinus' proposal").

In its initial protest, Delphinus challenged the agency's assessment of strengths under the technical approach element and the agency's best-value decision. Essentially, Delphinus asserted that the technical approach element put a premium on "relevant experience over all other considerations" and argued that because it earned a strength for its relevant experience, earned strengths under the other elements of the factor, and proposed a lower price than Prism, the agency's best-value tradeoff decision was not rational. Protest at 21-22. Delphinus further challenged the best-value tradeoff decision as flawed and based on an unreasonable technical evaluation. *Id.* at 35.

The Navy defended its procurement, arguing that it reasonably assessed strengths to the competing proposals under the technical approach element for "substantively similar relevant AIT experience and capability[.]" MOL at 7-9. The agency explained that Delphinus's and Prism's strengths under the technical approach element were found "substantively indistinguishable[.]" exceeded the relevant requirements "in a way that was similar[.]" and "provided 'nearly identical' advantages to the Government during contract performance[.]" *Id.* at 9.

The Navy defended its assessment of Prism's second strength under the technical approach element by asserting that the second strength was for Prism's ability to maintain and train a qualified workforce, and to rapidly mobilize that workforce to meet emergent requirements. *Id.* at 12. The Navy claimed that this was an area of Prism's proposal demonstrating merit distinguishable from Delphinus's proposal.<sup>3</sup> *Id.*

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<sup>3</sup> Of note here, the agency report included a declaration from the SSA. AR, Tab 13, SSA Decl. ¶¶ 2-5. In explaining the award decision, the declaration stated that "both Prism's and [Delphinus's] similar strength were focused on the experience, capacity, and approach to perform AIT services, inclusive of industrial services and warehousing support[.]" but claimed that while similar, "Prism's additional strength referenced within (continued...)

Regarding the best-value tradeoff decision, the Navy contended that there were no errors in the underlying evaluation of proposals and that its decision was reasonably based on a qualitative assessment of the merits of each proposal. *Id.* at 38-40.

As mentioned above, Delphinus timely filed comments on the agency report and a supplemental protest. In its comments, Delphinus argued that the best-value decision was based on a factual mistake. Comments & Supp. Protest at 7-15. In short, Delphinus argued that the SSAC incorrectly summarized the SSEB's evaluation which caused the SSA to mistakenly believe that Prism offered a stronger benefit regarding industrial services and installation efforts. *Id.* at 11. This mistaken belief, according to Delphinus, caused the SSA to base the best-value tradeoff "on a factually inaccurate conclusion[.]" *Id.*

Delphinus's first supplemental protest ground further argued that the Navy's best-value decision was flawed because it "turned on an illusory strength" credited to Prism. *Id.* at 34. Again, Delphinus contended that the SSAC erred in summarizing the SSEB's evaluation findings, resulting in the SSA mistakenly believing that Prism offered an advantage over Delphinus regarding "experience in industrial installation efforts and [] ability to support warehousing and industrial support[.]" when in all actuality both offerors were assessed a strength for those attributes. *Id.* As the best-value tradeoff decision was heavily influenced by the discriminatory strength (Prism's second strength), Delphinus argued that it was prejudiced by the agency's error.<sup>4</sup> *Id.* at 39. Eight days later, the Navy filed its notice of corrective action.

Delphinus requests that our Office recommend reimbursement of its protest costs, arguing that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Req. for Costs at 2-3. Delphinus contends that the agency's failure to take prompt corrective action in response to the initial protest forced it to litigate multiple disputes over access to documents and to file comments, a supplemental protest, and supplemental comments, before the agency took corrective action. *Id.* at 3.

The Navy asks our Office to deny the request, arguing that the initial protest was not clearly meritorious and that its corrective action promptly followed the supplemental protest. Resp. to Req. for Costs at 2, 4-10. Regarding the merits of the protest, the Navy argues that further record development and briefing would have been required to assess the merits of the challenges, and that the Navy's contemporaneous evaluation

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[the] SSDD was intended to reference Prism's ability to perform . . . by maintaining and training a qualified workforce and providing the ability to rapidly mobilize that qualified workforce to meet emergent requirements." *Id.* ¶ 4.

<sup>4</sup> The supplemental protest also challenged the agency's interpretation of the RFP's technical approach and staffing plan elements, and contested the agency's conduct of discussions relevant to the technical approach element. Comments & Supp. Protest at 40-42.

documentation provided a defensible legal position. *Id.* at 4-7 (arguing that the protest amounted to disagreement with reasonable evaluation judgments).

The Navy also argues that the initial protest was not clearly meritorious because “GAO did not render any rulings on the substance of any of [the] protest grounds[,]” did not conduct outcome prediction alternative dispute resolution or hold a hearing, “nor did GAO provide any indication that it would rule one way or another on any of the allegations[.]” *Id.* at 3. Regarding the supplemental protest, the Navy argues that its corrective action was prompt because it was filed by the deadline for submission of the supplemental agency report. *Id.* at 8-10.

In procurements conducted under FAR part 15, the source selection decision must be documented, and the documentation must include the rationale for any business judgments and tradeoffs made. FAR 15.308. In reviewing protests of an agency’s source selection decision, we do not reevaluate proposals. *Guidehouse LLP; Jacobs Tech., Inc.*, B-420860 *et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 17. Rather, we will examine the record to determine whether the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Id.* We will sustain a protest where the agency’s conclusions are not reasonably based. *Spectrum Healthcare Res., Inc.*, B-421325, Mar. 21, 2023, 2023 CPD ¶ 74 at 4.

On this record, we agree with Delphinus that the Navy failed to take prompt corrective action in the face of a clearly meritorious protest.<sup>5</sup> In short, the Navy’s best-value tradeoff decision was based on a clear error with respect to the evaluation record. Both offerors were assessed with a strength under the technical approach element for common reasons: experience with installation efforts and ability to support warehousing and industrial efforts. AR, Tab 3, SSEB Report at 9-10, 13-14; AR, Tab 6, SSDD at 5. Yet, the agency largely based its best-value tradeoff decision on Prism’s experience with installation efforts and its ability to support warehousing and industrial support. AR, Tab 6, SSDD at 5-8. The source selection decision did not explain how Prism’s experience was distinguishable from or better than Delphinus’s similar experience and abilities which were also cited by the agency as a strength. *See id.* Thus, Prism’s experience could not logically represent a discriminator over Delphinus.

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<sup>5</sup> We do not accept the Navy’s argument that because GAO did not address the merits of the protest issues during the pendency of the protest, the protest was not clearly meritorious. *See Resp. to Req. for Costs* at 3. It is not GAO’s practice to issue interlocutory decisions on the merits of protest grounds, nor does the absence of a ruling on any protest ground, alternative dispute resolution, or a hearing indicate that a protest issue was not clearly meritorious. Our decisions explain that determining whether to recommend reimbursement of costs rests on the unique factual and legal posture of each individual protest. *See e.g., Martek Global Servs., Inc.--Costs*, B-420865.3, Mar. 9, 2023, 2023 CPD ¶ 68 at 6-7.



Here, we find that a reasonable inquiry by the Navy into the allegations raised by Delphinus in the initial protest would have led the Navy to discover that its tradeoff decision relied upon the incorrect conclusion that only Prism's proposal contained a strength based on experience in industrial installation efforts and the ability to support warehousing and industrial support.<sup>6</sup> Delphinus's initial protest allegations--that the agency erroneously assessed strengths to the proposals under the technical approach element and that these errors impacted the best-value decision--pointed the Navy to the exact area of the record which proved problematic.

We also conclude that the agency failed to take prompt corrective action. The relevant allegation was raised in the requester's initial protest and the agency did not take corrective action until after the due date for the agency's report. As stated, we generally consider corrective action to be prompt if submitted before the due date for the agency's report. As such, on this record, we find that the Navy failed to take prompt corrective action in the face of a clearly meritorious protest. See *Centurum, Inc.--Costs, supra* at 6 (recommending costs where initial protest should have led the agency to find the defect ultimately prompting corrective action). We therefore recommend reimbursement of Delphinus's costs for filing and pursuing its initial and supplemental protest grounds challenging the best-value tradeoff decision.

We note that the agency filed its notice of corrective action before the deadline for submission of the supplemental agency report. However, the supplemental protest ground challenging the Navy's best-value tradeoff decision (see Comments & Supp. Protest at 34-39), shares the same core facts as the successful initial protest ground and therefore we find the supplemental protest ground not readily severable from the successful initial protest ground. Compare *Persistent Tech. Inc.,--Costs*, B-420960.6, May 7, 2024, 2024 CPD ¶ 174 at 6, 12 (initial and supplemental protest grounds were intertwined and thus not severable); with *Meridian Knowledge Sols., LLC--Costs*, B-420808.3, Dec. 5, 2022, 2022 CPD ¶ 308 at 7-8 (supplemental grounds were readily severable from meritorious initial grounds and therefore GAO did not recommend reimbursement where the agency's corrective action was filed before the deadline for submission of the supplemental agency report).

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<sup>6</sup> The record suggests that the agency realized this error in the selection decision and elected to defend its procurement anyway. See AR, Tab 13, SSA Decl. ¶ 4 (discussing what the SSDD "was intended to reference"). We recognize that the SSEB and SSAC made various references to Prism's training of a qualified workforce and its ability to rapidly mobilize. AR, Tab 3, SSEB Report at 13-14; AR, Tab 5, SSAC Report at 11-12. However, those attributes were not discussed as discriminators in the contemporaneously prepared best-value tradeoff decision. AR, Tab 6, SSDD at 5-7. In fact, the SSDD expressly noted Prism's qualified workforce as an area of Prism's proposal that provided "an essentially equal amount of benefit to the Government" as compared with Delphinus. *Id.* at 5.

## Remaining Protest Grounds were not Clearly Meritorious and are Severable

Delphinus also challenged the agency's technical and cost evaluations, and raised an allegation of misleading discussions regarding Delphinus's cost proposal. As discussed below, these protest issues were not clearly meritorious and are clearly severable from the successful issue. Accordingly, we do not recommend reimbursement of the protest issues related to the agency's technical evaluation, cost evaluation, or the allegation of misleading discussions.

First, Delphinus's protest raised multiple challenges to the Navy's technical evaluation of proposals. Protest at 20-28. For example, Delphinus alleged that the Navy did not properly elevate the importance Delphinus's relevant experience, unreasonably consolidated multiple advantageous aspects of its proposal into a single strength and failed to recognized more strengths in Delphinus's proposal under the technical capability factor. *Id.* at 21-22, 25-28.

The Navy defended its technical evaluation on all grounds. For example, regarding the allegation that the evaluation failed to properly elevate the importance of Delphinus's relevant experience, the Navy asserted that Delphinus misunderstood the terms of the solicitation. MOL at 5. In this regard, the Navy argued that the terms of the solicitation did not require the elevation of experience above all other considerations; rather, it informed offerors that relevant experience was one of many possible ways to earn a strength. *Id.* Also, for example, regarding the argument that the Navy improperly consolidated multiple positive aspects of Delphinus's proposal into a single strength, the Navy argued that it properly took into account each beneficial aspect of the proposal and that presenting the information as a single strength or as multiple strengths did not matter because Delphinus received all the credit it was due. *Id.* at 11 (stating "[w]hether a pie is eaten in slices, or devoured whole, the amount consumed remains the same.").

Delphinus also challenged the Navy's cost evaluation. Delphinus alleged that the Navy unreasonably escalated certain of its proposed rates; the cost evaluation was "internally inconsistent[;]" and the flawed cost evaluation caused the agency to misunderstand Delphinus's cost advantage over Prism. Protest at 28-33.

For example, Delphinus argued that the Navy unreasonably escalated its direct labor rates notwithstanding solicitation language stating that if an offeror provided a named individual with adequate payroll documentation for the same or similar labor category in which they currently perform, then the proposed direct labor rate would be accepted so long as it was equal to or greater than the wage determination rate.<sup>7</sup> *Id.* at 28-29 (citing

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<sup>7</sup> A wage determination is a determination of minimum wages or fringe benefits made under the Service Contract Labor Standards (SCLS), 41 U.S.C. §§ 6703, 6707(c), applicable to employment in a given locality of one or more classes of service employees. FAR 22.1001. The SCLS was formerly referred to as the Service Contract Act.

RFP at 160). Delphinus argued that its proposal met the conditions required for the Navy to accept its direct labor rates as proposed. *Id.*

In response, the Navy argued that Delphinus's proposal did not include sufficient information to justify its proposed rates for non-SCLS-covered employees and contained incomplete or conflicting information on rates for SCLS-covered employees. MOL at 29-30. The Navy explained that because Delphinus's proposal was informationally deficient in this area, the agency used an escalation rate announced in the solicitation to evaluate Delphinus's proposed costs. *Id.* at 30; see RFP at 142 (discussing escalation rates).

In addition to its evaluation challenges, Delphinus argued that the Navy conducted misleading discussions by depriving it the opportunity to better explain proposed labor rates and to understand the "role that proposed [rate] escalation would play" in the cost evaluation. Protest at 33-34. The Navy disagreed, arguing that in conducting discussions with Delphinus, the contracting officer reasonably discussed the agency's plan to apply rate escalation to "all positions" regardless of SCLS coverage because Delphinus "did not sufficiently justify its proposed escalation rates[.]" MOL at 35-36. While Delphinus's revised proposal included additional rationale for its proposed rates for SCLS-covered employees, the agency again found the justification insufficient. *Id.* at 36. According to the agency, it was not obligated to "spoon-feed" Delphinus during discussions and that ultimately this issue was due to Delphinus's failure to submit an adequately written proposal. *Id.*

On this record, we find that the agency had a defensible legal position to the allegations regarding the technical evaluation, cost evaluation, and misleading discussions. Indeed, a substantive response from the agency to include supporting documentation was necessary for us to assess the merits of the allegations presented; that is, the allegations presented questions warranting further research and analysis. They were not clearly meritorious.

We also find these challenges to be severable from the successful challenge to the best-value tradeoff decision because the technical evaluation, cost evaluation, and misleading discussion challenges involved different core facts as compared to the challenge focused on the basis for the best-value tradeoff. See e.g., *Loyal Source Gov't Servs., LLC--Costs*, B-407791.4, Feb. 14, 2014, 2014 CPD ¶ 139 at 4 (severing costs for evaluation challenges from clearly meritorious challenge to the best-value tradeoff decision); *Odle Mgmt. Grp., LLC--Costs*, B-404855.2, Mar. 26, 2012, 2012 CPD ¶ 122 at 3 (allegation of misleading discussions was not clearly intertwined with technical evaluation and source selection challenges). Namely, the best-value tradeoff decision focused on the agency's rationale for finding Prism's proposal to represent the best value to the government. In contrast, the technical evaluation challenges involved the agency's underlying assessment of technical proposals against the solicitation's

technical evaluation criteria, and the cost evaluation and misleading discussions challenges centered around the agency's evaluation of the requester's cost proposal.<sup>8</sup>

## CONCLUSION AND RECOMMENDATION

In sum, we conclude that Delphinus's initial argument regarding the Navy's best-value tradeoff decision was clearly meritorious and that the agency unduly delayed taking prompt corrective action. For the reasons discussed above, we recommend that the Navy reimburse Delphinus's reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees, with regard to the protest ground and supplemental protest ground implicating the Navy's best-value tradeoff decision. 4 C.F.R. § 21.8(e). Delphinus should file its claim for costs, detailing and certifying the time expended and costs incurred, with the agency within 60 days of this recommendation. *Id.* § 21.8(f)(1).

The request is granted.

Edda Emmanuelli Perez  
General Counsel

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<sup>8</sup> As noted above, Delphinus argued that the agency's defense of why it escalated proposed costs revealed a latent ambiguity in the solicitation. Comments & Supp. Protest at 40-41. However, the solicitation stated that adequate payroll documentation was needed for named individuals proposed for the same or similar labor category for their proposed labor rates to be accepted, and the agency argued that Delphinus had not provided adequate documentation. RFP at 160; MOL at 29-35. Accordingly, we find that this argument was not clearly meritorious and was otherwise severable from the challenges to the best-value tradeoff decision and therefore we do not recommend costs associated with pursuing this protest ground.