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Decision

Matter of: Perimeter Security Partners, LLC--Costs

File: B-422666.2

Date: August 8, 2025

Lee Dougherty, Esq., Effectus, PLLC, for the requester.
Allen Scott Black, Esq., Department of the Army, for the agency.
Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request that GAO recommend reimbursement of protest costs is granted where the agency unduly delayed taking corrective action in response to clearly meritorious protest arguments and where the other protest grounds were intertwined with the clearly meritorious issues.

DECISION

Perimeter Security Partners, LLC (PSP), a small business of Brentwood, Tennessee, requests that our Office recommend that it be reimbursed for the costs of filing and pursuing its protest challenging the issuance of a task order to Low Voltage Wiring, Ltd. (LVW), a small business of Colorado Springs, Colorado, under request for quotations (RFQ) No. W912DY-24-R-0008, issued by the Department of the Army, U.S. Army Corps of Engineers (Corps), for preventative and corrective maintenance services for access control points at 19 Army installations in the northeast region of the United States. PSP argues that it should be reimbursed its protest costs because the agency unduly delayed taking corrective action in response to its clearly meritorious protest.

We grant the request.

BACKGROUND

On December 14, 2023, the Corps requested quotations from General Services Administration schedule contract holders in accordance with Federal Acquisition

Regulation subpart 8.4.¹ Agency Report (AR), Tab 3, RFQ at 1, 3; Contracting Officer's Statement (COS) at 4. The RFQ was set aside for small businesses and contemplated the issuance of a fixed-price task order for a 12-month base period with up to four 12-month options. RFQ at 1; AR, Tab 4, RFQ amend. 1 at 5.

The RFQ advised that the order would be issued to the vendor representing the best value to the government considering the following three evaluation factors, in descending order of importance: technical approach and experience (the technical factor); past performance; and price. RFQ amend. 1 at 11-12. The RFQ provided that the best-value quotation would be determined by comparing non-price features and price. *Id.* at 11. It was more important to the Corps to acquire services with superior non-price features than to award a contract to the lowest-priced vendor. *Id.*

Three vendors, including PSP and LVW, the incumbent contractor, timely submitted quotations. COS at 5. The table below summarizes the agency's evaluation of the three quotations:

VENDOR	PSP	LVW	VENDOR 3
Technical	Good	Good	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence	Satisfactory Confidence
Price	\$44,334,304	\$45,752,797	\$47,765,732

AR, Tab 18, Source Selection Decision (SSD) at 2. The evaluators determined that while PSP's price was acceptable, it presented a potential price risk to the government because it was \$528,107 below the competitive pricing range.² *Id.* The source selection authority (SSA), who was the contracting officer, concluded that LVW's quotation represented the best value because LVW, as the incumbent, had "standing relationships and historical knowledge in this region" and received very positive

¹ All citations are to the record produced in B-422666 and use the Adobe PDF pagination of documents produced in the agency report.

² While the solicitation did not contemplate a price realism analysis as part of the price evaluation, it cautioned vendors against using a "buy-in" strategy and advised that "[u]nbalanced pricing will be considered a price deficiency" that would render a quotation unacceptable. RFQ amend. 1 at 15. The agency considered price risk in its evaluation of price quotations seemingly as part of a review for unbalanced pricing. AR, Tab 12, Price Analysis at 4; AR, Tab 17, Price Negotiation Memo. at 8. In any event, as discussed below, although the requester challenges the reasonableness of the agency's price risk evaluation, it does not argue that it was improper for the agency perform such an evaluation under the terms of the solicitation.

feedback from its customers for its performance. *Id.* The SSA also concluded that LVW's quotation was worth the \$1.4 million premium over PSP "to mitigate PSP's price risk to the Government." *Id.* The agency notified PSP of its decision to select LVW for the order on May 31, 2024. COS at 5. The agency provided a brief explanation of the basis for award to PSP and responded to its questions. *Id.*

On June 17, 2024, PSP filed a protest with our Office challenging the Corps's decision to issue the task order to LVW on the basis that the agency unreasonably evaluated PSP's quotation and conducted an unreasonable best-value tradeoff analysis. PSP argued that the agency should have rated its technical quotation as outstanding rather than good because it received two significant strengths and the agency should have assigned strengths for other aspects of PSP's quotation. Protest at 7-11. PSP also argued that the Corps should have assigned its past performance a rating of substantial confidence rather than satisfactory confidence. *Id.* at 11-15. In this regard, PSP asserted that the agency failed to consider contractor performance assessment reporting system (CPARS) comments from agency officials that praised PSP's performance as "excellent" and instead mechanically reviewed the CPARS adjectival ratings. *Id.* at 14-15. PSP also contended that its past performance should have been rated very relevant rather than relevant. *Id.* Further, PSP argued the agency's best-value tradeoff was inadequately documented and did not explain the agency's reason for issuing the task order to a higher-priced vendor where PSP and LVW's quotations received equal ratings; the requester maintained that but for the agency's flawed evaluation, PSP would have received the award. *Id.* at 15-18.

After receiving the agency report responding to the protest allegations, PSP filed comments raising additional arguments based on documents in the agency report. PSP alleged disparate treatment of vendors in the technical evaluation and argued the agency's technical evaluation relied on unstated evaluation criteria. Comments at 2-7. In support of its allegations, PSP noted that the RFQ identified three specific quotation features that would result in the assignment of a significant strength. For example, the solicitation provided that a significant strength would be assigned for "Experience with key personnel with direct experience with the [access control point maintenance and service] program (or similar commercial/ non-federal contracts involving maintenance of active vehicle barriers across multiple facilities/sites)." RFQ amend. 1 at 10.³

The agency assigned the requester's quotation two significant strengths that aligned with the bases identified in the RFQ. The agency also assigned LVW's quotation two significant strengths, one on a basis identified in the RFQ and a second for proposing procedures that pre-vet subcontractors, which "ensures that response times and travel costs will be held to a minimum." AR, Tab 15, Technical Evaluation Rept. at 5. PSP

³ The other two features specifically identified by the solicitation as providing the basis for the assignment of a significant strength were a clearly shown "plan to limit travel expenses by using local workforce/regional workforce" and "[e]xperience that clearly shows self-performance for the [preventative maintenance] and [corrective maintenance] activities of over 75 [percent]." RFQ amend. 1 at 10.

argued that the Corps improperly assigned the second significant strength to LVW's quotation so that it would be evaluated as virtually equal to the quotations of PSP and the third vendor. *Id.* at 2-5. PSP further argued the record failed to explain why this strength was significant. The requester also asserted that if the second LVW significant strength was justified, PSP's quotation should also have been assigned a comparable significant strength because the agency found PSP also planned work around its workers' skill levels and would "ensure the right technicians/subcontractors are dispatched the first time avoiding the need for re-visits" and "leading to costs in savings and time." Comments at 4 (quoting AR, Tab 15, Technical Evaluation Rept. at 9).

PSP also alleged disparate treatment in the past performance evaluations and argued the agency failed to adhere to the solicitation's stated evaluation criteria. Comments at 8-10. PSP argued that the agency treated offerors disparately because the agency considered CPARS comments only for LVW in its evaluation. *Id.* at 9. PSP also argued that LVW's ratings on its past performance projects were "objectively" less favorable than the ratings received by the other two vendors. In this regard, the requester noted that LVW received 16 ratings of satisfactory and zero ratings of very good, whereas PSP and the third vendor received 11 ratings of satisfactory/four ratings of very good and 11 ratings of satisfactory/six ratings of very good respectively. *Id.* PSP asserts that the Corps disregarded the past performance evaluation criteria by equalizing the overall past performance evaluation ratings "despite the clear, objective differences in the offers." *Id.* Further, the requester asserted that "the Agency overlooked the Awardee's lower scores by focusing instead on comments to the Awardee's CPARS." *Id.* (quoting AR, Tab 11, Past Performance Evaluation Report at 2, "Although LVW's performance on a previous version of this contract was rated by the Contracting Officer as Satisfactory, the CPARS ratings comments seem to indicate that its performance on the contract was much better than Satisfactory.").

Lastly, PSP challenged the agency's best-value tradeoff analysis. Protest at 15-17; Comments at 10-13. PSP argued that the agency's best-value tradeoff was unreasonable because it was based on unreasonable technical and past performance ratings and that the agency unreasonably credited LVW's incumbent status in its award decision. Comments at 10-11. PSP also alleged that the agency disparately treated the two quotations in the award decision by concluding that the potential price risk associated with PSP's quotation needed to be mitigated while failing to consider or mitigate a comparable price risk associated with LVW's quotation. *Id.* at 11-12. In this regard, PSP pointed out that in the price negotiation memorandum, the agency considered PSP's pricing competitive for award and noted:

[A]s outlined above, the pricing for some [contract line item number (CLIN)] elements fell below the competitive range. While the low CLIN values are attractive from a pricing perspective, it does introduce a possible element of risk regarding the ability to maintain sound financial footing as well as acceptable performance levels during the course of the contract. In my opinion, it should not automatically preclude the bidder from contract award consideration but does warrant a close examination

of the technical elements of their proposal to ensure that all identifiable features of work are indeed accounted for.

Id. at 12 (quoting AR, Tab 17, Price Negotiation Memo. at 8) (italics omitted); *see also* AR, Tab 12, Price Analysis at 4. PSP observed that the price negotiation memorandum noted the same risk from pricing below the competitive range in its evaluation of LVW's price. Comments at 12. Nevertheless, PSP notes that the award decision failed to similarly analyze LVW's price risk or consider whether the agency needed to mitigate LVW's price risk. *Id.* at 12-13; *see also* AR, Tab 12, Price Analysis at 4. PSP contended that the agency was required to document its decision to issue the task order to a higher-priced vendor and that its decision had to be reasonable. *Id.* at 13. In PSP's view, the agency failed on both counts and PSP was competitively prejudiced. *Id.* at 13.

Upon review of PSP's comments, our Office asked the agency to respond to the requester's comments. Electronic Protest Docketing System (Dkt.) No. 19 (requesting that the agency respond to PSP's additional arguments). We also asked PSP to respond to the agency's supplemental filing. Dkt. No. 20 (requesting PSP to respond to the agency's filing). Once the additional briefing and development of the protest record concluded, the cognizant GAO attorney conducted an outcome prediction alternative dispute resolution (ADR) telephone conference.

During the ADR, the GAO attorney advised the parties that GAO would likely sustain PSP's protest on two grounds. The GAO attorney advised that GAO would likely sustain PSP's challenge to the agency's past performance evaluation because the record failed to demonstrate that the agency's evaluation was reasonable. The GAO attorney also advised that GAO would likely sustain PSP's protest of the agency's best-value tradeoff and source selection decision on the basis that the Corps's basis for award was not adequately documented and the SSA improperly relied on LVW's incumbent status as the deciding factor in the award decision.

After the ADR, the Corps notified our Office that it intended to take corrective action by reevaluating quotations and making a new award decision, whereupon we dismissed the protest as academic. *Perimeter Sec. Partners, LLC*, B-422666, Sept. 9, 2024 (unpublished decision). PSP then filed this request for a recommendation that its protest costs be reimbursed.

DISCUSSION

PSP requests that we recommend that it be reimbursed its costs of filing and pursuing its protest. PSP contends that all its protest grounds were clearly meritorious and not severable and argues that it should be reimbursed for all its costs because the agency failed to take prompt action. Req. for Costs at 1-2; Costs Comments at 6-8. In this connection, PSP contends that the Corps did not take corrective action until after the agency report was filed, the parties provided additional briefing, and the GAO attorney

conducted ADR advising that GAO would likely issue a decision sustaining PSP's protest. Req. for Costs at 1; Costs Comments at 5.

The agency argues that the request should be denied because it "agreed to participate in Outcome Prediction [ADR] with no conditions relating to assessment of costs." Opposition to Req. for Costs at 4. The agency contends that "[a]t no time during the Outcome Prediction process did GAO notify the Agency that it would be required to pay Protester's costs as part of the Outcome Prediction process." *Id.* The Corps argues that because GAO did not advise it that costs may be recommended as part of ADR, the agency should not be required to pay costs. In this connection, the agency contends that our publication Bid Protests at GAO: A Descriptive Guide, "does not mandate or even suggest that the Agency must pay costs or attorneys' fees" if it participates in ADR. *Id.* The agency also states without explanation or argument that the requester's arguments were not clearly meritorious, and that it took prompt corrective action as soon as it was advised by the GAO attorney that GAO would likely sustain the protest. *Id.* The agency requests, also without explanation or argument, that if GAO recommends that the Corps pay PSP's bid protest costs, only the costs allocated to claims discussed during ADR should be reimbursed by the agency. *Id.*

As preliminary matter, the agency mischaracterizes GAO's cost reimbursement request process. Our Bid Protest Regulations authorize GAO to recommend that the agency pay the requester's reasonable cost of filing and pursuing a protest "[i]f the agency decides to take corrective action in response to a protest." 4 C.F.R. § 21.8(e), (f). In other words, GAO is authorized to recommend costs as a result of an agency's corrective action regardless of whether ADR is conducted, and regardless of whether GAO advised it would recommend costs during an ADR conference call. In this regard, the recommendation of costs is a consequence of the agency's corrective action and not a consequence of the agency's participation in ADR.

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 clearly meritorious protest grounds. *East Coast Nuclear Pharmacy--Costs*, B-412053.5, Aug. 31, 2016, 2016 CPD ¶ 249 at 5. We consider a protest to be 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.* A GAO attorney will inform the parties through ADR that a protest is likely to be sustained only if he or she has a high degree of confidence regarding the outcome; therefore, the willingness to do so is generally an indication that the protest is viewed as clearly meritorious. See *Chags Health Info. Tech., LLC, et al.--Costs*, B-413116.38 *et al.*, Apr. 19, 2017, 2017 CPD ¶ 126 at 4.

With respect to the promptness of the agency's corrective action under the circumstances, we review the record to determine whether the agency took appropriate

and timely steps to investigate and resolve the impropriety. *Apex Transit Sols., LLC--Costs*, B-418631.8, Aug. 13, 2021, 2021 CPD ¶ 282 at 7. We generally consider corrective action to be prompt if it is taken before the due date for the agency report responding to the protest but not prompt where corrective action is taken after that date. *PNS Holdings, LLC--Costs*, B-418798.3, Oct. 1, 2020, 2021 CPD ¶ 93 at 2-3. Moreover, where a new protest allegation is raised after the filing of the agency report, corrective action is prompt if taken prior to the deadline set by our Office for the agency's response to the new protest grounds. See *Alliant SB CTA, LLC--Costs*, B-411842.5, Nov. 4, 2016, 2016 CPD ¶ 323 at 2-3.

Based on our review of the record, and as discussed below, we find that PSP has raised clearly meritorious challenges to the evaluation of its quotation and the best-value determination to which the agency did not promptly respond. Accordingly, we recommend the agency reimburse PSP's protest costs.

Past Performance Evaluation Challenge

As stated above, PSP argued that the agency should have assigned its past performance a rating of substantial confidence rather than satisfactory confidence. PSP also argued that the agency ignored the evaluation criteria and treated vendors disparately because the agency only considered LVW's CPARS comments and not the CPARS comments for PSP. The record establishes that the Corps's past performance evaluation was unreasonable and reflected disparate treatment of PSP and LVW.

The solicitation advised that for the past performance evaluation, the agency would review the CPARS evaluations for the projects submitted. RFQ amend at 1 at 13. Past performance would be evaluated based on "the quality of work, cost control, schedule, business relations, and management of key personnel," and recency, relevancy and overall confidence ratings would be assigned. *Id.* at 13-14. As relevant here, the RFQ defined satisfactory confidence to mean that "[b]ased on the Offeror's recent/relevant performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort," and substantial confidence as "a high expectation that the Offeror will successfully perform the required effort."⁴ *Id.* at 14.

The record shows the Corps did not meaningfully consider all the aspects of PSP's CPARS evaluations, including both adjectival ratings and comments, when evaluating PSP's past performance. The agency only documented its determination that PSP's projects were recent and relevant, and tallied the CPARS adjectival ratings--11 ratings of satisfactory and 4 ratings of very good--which the agency then found merited a rating

⁴ Although the agency issued the solicitation as an RFQ, throughout the record the parties use the terms vendors and quotations, and offerors and proposals interchangeably. Here, the distinction between a quotation and a proposal has no bearing on our analysis in the protest and therefore, references herein are considered interchangeable. Our decision refers to the submission of quotations by vendors for consistency.

of satisfactory confidence. AR, Tab 11, Past Performance Evaluation Report at 1. Nothing in the past performance evaluation indicates that the agency reviewed PSP's CPARS comments before it concluded PSP merited a rating of satisfactory confidence.

In contrast, when the agency considered LVW's proposal it specifically considered the CPARS comments in addition to the agency's determinations of recency, relevancy, and the number of adjectival ratings from the CPARS reports--16 ratings of satisfactory--in its overall rating of satisfactory confidence. *Id.* at 1-2. The agency then used the CPARS comments to conclude that LVW's performance "was much better than" the rating of satisfactory set forth in the CPARS. *Id.* at 2; see also AR, Tab 16, Source Selection Evaluation Board Memo. at 15. The Corps quoted a CPARS comment for the incumbent northeast region contract stating that LVW "did an excellent job maintaining the [barriers] in this region with an average [barrier] operational rate of 99 [percent]." AR, Tab 11, Past Performance Evaluation Report at 2. Based on this comment, the agency observed that "[a]lthough LVW's performance on a previous version of this contract was rated by the [contracting officer] as Satisfactory, the CPARS ratings comments seem to indicate that its performance on the contract was much better than Satisfactory."⁵ *Id.*

The record demonstrates that the Corps treated PSP and LVW unequally in its evaluation of their past performance. It is fundamental that the contracting agency must treat all offerors equally, and therefore, must evaluate offers evenhandedly against common requirements and evaluation criteria. *FitNet Purchasing Alliance*, B-410263, Nov. 26, 2014, 2014 CPD ¶ 344 at 11. The Corps's evaluation of LVW included documented analysis of the CPARS comments and shows that the agency recognized that ratings of satisfactory had been assigned, but in the agency's view, the CPARS narrative comments warranted a "better than satisfactory" performance rating.

For PSP, however, the evaluation record lacks any similar consideration of the CPARS comments about PSP's performance. This is particularly problematic where PSP received CPARS comments like those considered by the agency for LVW. In this respect, for PSP's southeast region contract, PSP received adjectival ratings of satisfactory but the CPARS comments stated that PSP did an "[e]xcellent job in maintaining the [barriers] in this region," and "[t]he contractor went above and beyond at Fort Rucker." Protest exh. CPARS W912DY-20-F-0663 (interim) at 2. These remarks are nearly identical to the CPARS remarks about LVW's performance, which led the agency to conclude that LVW's performance record was in fact better than the "satisfactory" adjectival ratings LVW received in its CPARS.

⁵ The record shows that the Corps also evaluated the third vendor the same way as PSP. The Corps determined that the third vendor's past performance references were recent, relevant, and counted the adjectival ratings from the CPARS without any further analysis of its CPARS comments. See AR, Tab 11, Past Performance Evaluation Report at 2.

Had the agency considered the underlying CPARS comments about PSP's performance, as it did for LVW, rather than simply relying on PSP's overall CPARS adjectival ratings, the agency may have similarly concluded that PSP's past performance was "better than satisfactory." This would have negated any perceived advantage for LVW under the past performance factor, which could have been dispositive given the close nature of the competition. Accordingly, the record reflects that the agency's past performance evaluation was disparate in way that prejudiced PSP. *Trident Vantage Sys., LLC; SKER-SGT Eng'g & Sci., LLC*, B-415944 *et al.*, May 1, 2018, 2018 CPD ¶ 166 at 22 ("Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award."). In sum, this protest ground is clearly meritorious because a reasonable review of the record would have revealed the problems with the agency's evaluation.

Best-Value Tradeoff

As discussed above, PSP also challenged the agency's best-value tradeoff analysis and source selection decision. Protest at 15-17; Comments at 10-13. For the reasons that follow, we conclude that the agency's tradeoff and award decision are unreasonable and that if the agency had performed a reasonable review of the record, it would have discovered that LVW's incumbency improperly figured into the SSA's award decision.

The record shows that the award decision failed to discuss the merits of the quotations equally. AR, Tab 18, SSD at 1-2. For LVW, the SSA noted that it received a rating of good for the technical factor and a rating of satisfactory confidence for past performance. The SSA also noted that LVW was the incumbent contractor with established relationships and historical knowledge of the requirement. *Id.* at 1. While the price evaluators found that LVW's pricing was consistently below the competitive range and introduced a potential price risk to the government "regarding the ability to maintain sound financial footing as well as acceptable performance levels during the course of the contract," this information was omitted from the award decision. AR, Tab 12, Price Analysis at 3-4. For PSP, however, the SSA simply stated that PSP provided the lowest-priced quotation but that its pricing was below the competitive range and posed a price risk to the government. *Id.* at 2. The SSA also listed PSP's adjectival ratings and provided no other insights about PSP's quotation.

Moreover, in the tradeoff analysis, the agency discussed only LVW's CPARS comments and the benefits LVW provides as the incumbent contractor. *Id.* at 2.

Among the three Offerors, the Source Selection Board concluded LVW provided the second lowest bid. LVW is also the incumbent contractor, with standing relationships and historical knowledge in this region. The board determined it was worth the additional \$1.4M to mitigate PSP's price risk to the Government. . . . In addition to those considerations, I am also persuaded by LVW's Past Performance specifically on the current

Northeast Region task order, as the CPARS comments on the current contract indicate that the incumbent, LVW, has received very positive feedback and remarks from its customers regarding its performance. I have determined that paying a slight premium to award the next generation of this contract to LVW is in the best interest of the Government.

Id. In response to the protest, the contracting officer stated he “focused on LVW’s Past Performance and the fact that LVW is the current contractor, the incumbent, for the [Northeast] Region contract.” COS at 6. The contracting officer further explained as follows:

As the incumbent, LVW has built relationships, experience and knowledge in how to manage and effectively perform its duties under the current task order. It has equipment and personnel in place that will not have to be acquired or moved and there should be no downtime or lag in LVW’s performance under the new task order, since it has been performing well under the current task order. Evidence of its performance was exhibited in the Technical and Past Performance Evaluations and is documented in LVW’s CPARS comments on the current NE Region task order. The CPARS comment was that LVW coordinated on-site to ensure satisfaction and that it did an excellent job in maintaining the [Active Vehicle Barriers] creating a 99 [percent] operational rate. The price difference between PSP and LVW is approximately 3 [percent] on a 5 year task order. That would seem to be a small price to pay to ensure that a contractor who has been performing well remains in place and continues to do solid, trustworthy and quality work for a customer who apparently has confidence [in] it’s (sic) performance. This is a relationship that seems to be working and I see no reason to disrupt it.

Id. at 6-7. The record clearly demonstrates that LVW’s incumbent status was improperly factored into the SSA’s eventual award decision.

It is well-established that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract, including performance as the incumbent contractor. Our Office has found that an agency is not required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. *AXIS Mgmt. Grp., LLC*, B-408575.2, May 9, 2014, 2014 CPD ¶ 150 at 3. Further, an agency may properly consider such advantages, where appropriate, in accordance with the evaluation criteria. See, e.g., *Honeywell Tech. Sols., Inc.*, B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 15 (finding reasonable the agency’s evaluation of the incumbent protester’s advantages that met evaluation criteria). That was not the situation in the protest here.

The contemporaneous record and the contracting officer's response to the protest revealed that the agency improperly credited LVW's incumbent status. In this regard, the evaluation criteria do not identify incumbent status as an evaluation factor or criterion. The RFQ provided that quotations would be evaluated based on the feasibility and thoroughness of their technical approach, and the "quality of work, cost control, schedule, business relations, and management of key personnel" for past performance. RFQ amend. 1 at 12-13. While it may have been appropriate for the agency to give weight to LVW's successful past performance on the incumbent contract, as that work could reasonably be considered more relevant than other work, it is clear from the record here that the agency also sought to not "disrupt" a working relationship with the current firm, LVW.

An aversion to disruption of the incumbent working relationship--an implicit preference for the *status quo*--is not reasonably encompassed by any of the evaluation criteria, however. See, e.g., *FreeAlliance.com, LLC et al.*, B-419201.3 *et al.*, Jan. 19, 2021, 2021 CPD ¶ 56 at 8 (stating that while an agency may take into account matters that are not expressly identified but are logically encompassed by, or related to, the stated evaluation criteria, an agency may not give importance to specific factors beyond what vendors would reasonably expect). Moreover, we note that the award decision does not address the vendors' technical approaches in terms of the stated evaluation criteria, except to note the adjectival ratings. Additionally, as described above, the agency's selection decision treated PSP and LVW disparately by relying on underlying CPARS comments about LVW's past performance to find that LVW demonstrated better than satisfactory past performance, without also giving consideration to similar comments in the CPARS reports of PSP's past performance. Furthermore, the agency's disparate treatment extended to its consideration of price risk. The tradeoff decision identifies PSP's price risk as a basis for the award to LVW even though the agency had identified essentially same risk associated with LVW's pricing.

In sum, the record shows that the agency's best-value tradeoff analysis and award decision were unreasonable. The agency's errors here were prejudicial to PSP and these flaws provided a basis to sustain the protest. See e.g., *Deloitte Consulting LLP*, B-417988.2 *et al.*, Mar. 23, 2020, 2020 CPD ¶ 128 at 11, 15 (sustaining protest where "neither the award decision nor the contracting officer's response to the protest explains how the contracting officer evaluated the differences between the vendors' quotations"). Accordingly, we find these protest allegations clearly meritorious.

Promptness of Agency Corrective Action

The agency argues that even to the extent the requester's challenges were meritorious, its corrective action was prompt because it was taken within a week of the ADR conference call, and as a result, our Office should not recommend the agency reimburse PSP its protest costs. The agency misstates the standard for prompt corrective action. We consider corrective action to be prompt if it is taken before the due date for the agency report responding to the protest, we generally do not consider it to be prompt where it is taken after that date. *PNS Holdings, LLC--Costs, supra*. Here,

the Corps failed to take corrective action until after the agency submitted its agency report.⁶ Accordingly, we find the agency's corrective action was unduly delayed. See *The Jones/Hill JV--Costs*, B-286194.3, Mar. 27, 2001, 2001 CPD ¶ 62 at 13 (undue delay found where agency took corrective action after ADR).

Severability

The agency further argues that the PSP should not recover costs for issues our Office did not discuss during the ADR teleconference. Opposition to Req. for Costs at 4. In this connection, the Corps states that the "[p]rotester's claims can be itemized as separate arguments, most of which were not discussed during the Outcome Prediction session or relied upon by the GAO attorney in her findings." *Id.* The agency, however, did not identify the specific grounds it argues could be severed. Nonetheless, we do not find that severance is warranted here.

Generally, we consider a successful requester should be reimbursed costs incurred with respect to all issues pursued, not merely those upon which it prevails. See *Coulson Aviation (USA) Inc.; 10 Tanker Air Carrier, LLC--Costs*, B-406920.6, B-406920.7, Aug. 22, 2013, 2013 CPD ¶ 197 at 5. However, in appropriate cases, we have limited the recommended reimbursement of protest costs where a part of the costs is allocable to a losing protest issue that is so clearly severable as to essentially constitute a separate protest. See, e.g., *Persistent Technology, Inc.--Costs*, B-420960.6, May 7, 2024, 2024 CPD ¶ 174 at 10 (denying reimbursement request for protest costs where protest ground is not clearly meritorious and is severable from the clearly meritorious grounds).

Limiting recovery of protest costs in all cases, however, to only those issues on which the requester prevailed would be inconsistent with the broad, remedial congressional purpose behind the cost reimbursement provisions of the Competition in Contracting Act of 1984. 31 U.S.C. § 3554(c)(1)(A); *Fluor Energy Tech. Servs., LLC--Costs*, B-411466.3, June 7, 2016, 2016 CPD ¶ 160 at 3. In determining whether protest issues are so clearly severable as to constitute separate protests, we consider, among other things, the extent to which the issues are interrelated or intertwined--i.e., the extent to which successful and unsuccessful arguments share a common core set of facts, are based on related legal theories, or are otherwise not readily severable. See *Deque Sys., Inc.--Costs*, B-415965.5, Aug. 23, 2018, 2018 CPD ¶ 304 at 5.

In this case, we find that a common core set of facts and the legal arguments raised inextricably link the protest allegations. All of PSP's arguments concerning the technical

⁶ We note that to the extent GAO sought additional information from the agency in response to the requester's comments, the agency's corrective action was unduly delayed because it was also taken after GAO received the agency's response. See *Alliant SB CTA, LLC--Costs*, *supra*. (finding that where a new protest allegation is raised after the filing of the agency report, corrective action is prompt if taken prior to the deadline set by our Office for the agency's response to the new protest grounds.).

and past performance evaluations, and the agency's tradeoff and source selection decision are intertwined and share common facts and legal theories with the clearly meritorious protest grounds. The technical and past performance evaluations formed the basis for PSP's arguments that the agency unreasonably evaluated PSP under these two factors. These evaluations also related to PSP's protest grounds challenging the agency's tradeoff and source selection decision. Accordingly, each of PSP's evaluation, tradeoff, and source selection decision protest grounds share a common core set of facts--the planned issuance of task order to LVW--and therefore we find that the protest issues are not readily severable.

RECOMMENDATION

We recommend that the Corps reimburse PSP its reasonable protest costs, including attorneys' fees, related to all protest grounds raised by PSP. 4 C.F.R. § 21.8(d)(1). The requester should submit its claim for costs detailing and certifying the time expended and costs incurred, directly to the Corps within 60 days of receipt of this decision. *Id.* § 21.8(f)(1).

The request is granted.

Edda Emmanuelli Perez
General Counsel