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Decision

Matter of: JSToogood, LLC d/b/a Joint Strategic Technologies--Costs

File: B-423600.3

Date: December 11, 2025

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Colonel Justin A. Silverman, and Aaron J. Weaver, Esq., Department of the Air Force, for the agency.

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DIGEST

1. Reimbursement for protest costs is dismissed, in part, where the agency has agreed to pay costs for an allegation that it concedes is clearly meritorious and that the agency unduly delayed taking corrective action, and has also agreed to pay costs for certain derivative allegations that the agency agrees are intertwined.

2. Reimbursement for remaining protest costs is denied where the allegations are severable from the agreed-upon clearly meritorious challenge and do not by themselves demonstrate clear merit.

DECISION

JSToogood, LLC, d/b/a Joint Strategic Technologies (JST), of Southlake, Texas, requests that our Office recommend it be reimbursed the reasonable costs of filing and pursuing its protests, including attorneys' fees, with respect to request for proposals (RFP) No. FA703725R0002, issued by the Department of the Air Force for tactical and operations readiness support services. JST argues that its underlying protest allegations challenging the agency's evaluation and award decision were clearly meritorious and that the agency unduly delayed taking corrective action.

We dismiss the request in part and deny it in part.

BACKGROUND

On March 17, 2025, the Air Force issued the RFP, using the procedures set forth under Federal Acquisition Regulation (FAR) part 15, Contracting by Negotiation, and restricted competition to eligible 8(a)¹ small businesses, to procure tactical and operations readiness support services for the AFCYBER Operations Directorate (A3). Agency Report (AR), Tab 4a, RFP, at 1; AR, Tab 4b, RFP, Performance Work Statement (PWS) at 3. Some of the specific duties to be performed include: reviewing and analyzing the operational readiness of particular forces; monitoring subordinate unit readiness; battle rhythm preparation; and, analyzing and recommending mission essential task alignment. *Id.* at 3-4. The RFP contemplated the award of a fixed-price contract to be performed over a 1-year base period, four 12-month option periods, and one 6-month extension period. *Id.* at 4; RFP at 3-4.

Award would be made on a best-value basis to the highest technically rated offeror (HTRO) with acceptable past performance and a fair and reasonable price. RFP at 39. The RFP identified three factors for consideration: past technical experience, past performance, and price. *Id.*

To demonstrate past technical experience, the RFP instructed offerors to reference a maximum of five work samples and complete a self-scoring matrix. RFP at 36. The self-scoring matrix required offerors to identify the number of work samples with work similar to the agency's requirement, and the number of full-time equivalents (FTE) in "Intelligence Analyst" or "Cyber Analyst" positions. AR, Tab 4c, RFP, Self-Scoring Matrix at 1. Offerors could receive a maximum of 100 points for the "[n]umber of work samples" category, and a maximum of 50 points for the "[n]umber of FTEs" category. *Id.*; RFP at 40. Thus, in total, offerors could receive a maximum of 150 points. *Id.*

When evaluating past experience, the agency would initially rank all proposals from the highest self-rated score to the lowest self-rated score. RFP at 40. The agency would then validate the scores for only the two highest self-scored proposals. *Id.* If the agency could not validate a score, then the agency could unilaterally adjust downward any score to zero points; the agency could not increase an offeror's score. *Id.* If an offeror's score decreased during the validation process and was no longer one of the two highest-scoring proposals, then the agency would validate the next-highest

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

self-rated scored proposal until it identified the two highest scoring validated proposals (2 HTRO). *Id.*

The agency would then assess the referenced past performance for the 2 HTRO on an acceptable or unacceptable basis. RFP at 40. The agency would assess the recentness and relevancy of referenced work samples and then examine the quality of performance. *Id.* To receive an “acceptable” rating, the referenced past performance must provide the agency with a reasonable expectation that the offeror will perform the contract successfully. *Id.* For the price factor, the agency would evaluate proposed prices for completeness, balance, and reasonableness. *Id.*

When selecting the awardee, the RFP advised “[a]ward will be made to a responsible HTRO with Acceptable Past Performance, with a Government-validated technical score within 10 [percent] of the highest Government-validated technical score and with the lowest Total Evaluated Price (TEP).” RFP at 40. Further, the RFP specified that the agency was not selecting the lowest-priced technically acceptable proposal and would not conduct a subjective tradeoff analysis. *Id.* at 39.

Prior to the April 7, 2025, close of the solicitation period, five offerors, including JST and Cyntel, submitted timely proposals. Contracting Officer’s Statement (COS) at 6; AR, Tab 11, Source Selection Decision (SSD) at 1, 5. The agency’s evaluation produced the following relevant results:

	JST	Cyntel
Past Technical Experience	[DELETED]	[DELETED]
Past Performance	Acceptable	Acceptable
Total Evaluated Price	[DELETED]	\$3,476,452

Id. at 2, 5-6. After considering proposals, the source selection authority (SSA) identified Cyntel’s proposal as representing the best value in accordance with the terms of the solicitation. *Id.* Specifically, the SSA noted that only Cyntel’s past technical experience score was within 10 percent of the highest-validated score (*i.e.*, its own), that Cyntel’s past performance was evaluated as “acceptable,” and that the firm’s proposed price was fair and reasonable. *Id.* at 5-7.

On May 21, the Air Force made award to Cyntel. AR, Tab 14, Cyntel Notice of Award at 2. One day later, the agency notified JST that its proposal was unsuccessful. AR, Tab 12, JST Notice of Unsuccessful Offer at 1. After receiving a debriefing, JST filed its protest with our Office on June 6. JST raised multiple allegations challenging the agency’s conduct of the acquisition. JST principally argued that the Air Force unreasonably evaluated its proposal under the past technical experience factor because the agency unreasonably determined that three of its five referenced work samples were not relevant and did not warrant any points. Protest at 10-13. JST also challenged the agency’s determination that none of the FTEs assigned to these referenced contracts were “Intelligence Analysts” or “Cyber Analysts.” *Id.* at 13-14.

Additionally, JST challenged the Air Force's evaluation of Cyntel's past technical experience and past performance. JST argued that Cyntel lacked relevant experience and therefore should not have been assigned any points under the past technical experience factor. Protest at 15-19. As support, JST cited publicly available information from usaspending.gov, which purportedly showed that Cyntel had only performed four subcontracts supporting the Department of Defense and eight subcontracts supporting the General Services Administration, and that none involved functions related to this contract. *Id.*

JST also challenged the agency's evaluation of Cyntel's past performance. This challenge asserted that Cyntel's past performance should have been evaluated as "unacceptable," because the firm lacked any relevant performance. Protest at 21-22.

Finally, JST advanced a derivative challenge that the Air Force unreasonably made its selection decision due to the evaluation errors, including the agency's alleged unreasonable evaluation of JST's past technical experience. Protest at 22-23 (under a "proper evaluation" of JST's past technical experience, "JST would have received a total score of [DELETED], the highest validated score among all of the offerors or, at a minimum, a total score of [DELETED] (excluding the FTE points errors), which would have placed its score well within the ten percent range.").

On July 7, the Air Force filed its report disputing each of JST's protest allegations. The Air Force explained that it reasonably evaluated three of JST's referenced work samples as "not relevant" because none involved tasks similar to the instant requirement. Memorandum of Law (MOL) at 7-11. The Air Force also explained that it reasonably did not assign points for the FTEs serving under the three work samples because the firm did not plainly identify whether these FTEs belonged to the "Intelligence Analysts" or "Cyber Analysts" labor categories. *Id.* at 12-13.

The Air Force also argued that it reasonably evaluated Cyntel's proposal under the past technical experience and past performance factors. The Air Force explained that it assigned maximum point totals (20 points) for three of Cyntel's referenced work samples under the past technical experience factor because they demonstrated examples of services similar to the instant requirement. MOL at 13-16. Likewise, the Air Force explained that it evaluated Cyntel as "acceptable" under the past performance factor because it determined that three of the contracts were relevant and that Cyntel demonstrated positively rated performance for them. *Id.* at 16-17.

Finally, the Air Force argued that JST's challenge to the selection decision was baseless because the evaluation record did not demonstrate any error. MOL at 17.

On July 17, JST filed its comments on the agency's report and also raised multiple supplemental allegations principally targeting the agency's evaluation of Cyntel's past technical experience and past performance. When commenting on the report, JST maintained and supplemented its challenge that the agency unreasonably evaluated its

past technical experience. Specifically, it contended that the agency unreasonably applied an “all-or-nothing” evaluation scheme which was inconsistent with the terms of the solicitation, and that had the agency not done so, then it would have been awarded partial points for three of its referenced work samples. Comments and Supp. Protest at 4-6, 27-28. JST also argued that FTEs assigned to those three work samples should have warranted points because they performed the requisite functions and the agency’s cursory evaluation did not examine their specific functions. *Id.* at 29-30.

JST raised supplemental challenges to the agency’s evaluation of Cyntel’s past technical experience, past performance, and price. As to Cyntel’s past technical experience, JST argued that Cyntel failed to submit official contract documentation memorializing its subcontract agreements as required by the solicitation, and that the firm relied on prime contractor performance work statements (PWS) rather than identifying the specific work that it performed as a subcontractor. Comments and Supp. Protest at 6-16. JST also argued that two of the referenced work samples should have been evaluated as “not relevant” because agency evaluators had initially concluded that they were “not relevant” for the past performance evaluation. *Id.* at 16. On this topic, JST finally argued that the agency unreasonably evaluated Cyntel’s number of FTEs because the Air Force failed to reasonably verify that Cyntel’s FTEs were performing under the claimed labor categories. *Id.* at 17-18.

Regarding Cyntel’s past performance, JST argued that the contracting officer, acting as the SSA, unreasonably disregarded the conclusion of agency evaluators that only one of the referenced work samples was relevant. Comments and Supp. Protest at 19. Alternatively, JST argued that the agency unreasonably found the work samples relevant because Cyntel did not provide documentation sufficient to show that the subcontracts were similar in size, scope, or complexity. *Id.* at 19-22. Lastly, on this topic, JST argued that the Air Force did not reasonably consider performance shortcomings exhibited by Cyntel. *Id.* at 22-23.

JST also asserted that the agency unreasonably evaluated Cyntel’s price because there was a discrepancy between the evaluated price and the awarded value of the contract. Comments and Supp. Protest at 23-24. Based on this discrepancy, JST appeared to contend that the agency improperly assessed or considered whether Cyntel’s proposed price was fair and reasonable. *Id.*

As its final supplemental allegation, JST repeated its assertion that the agency’s selection decision was unreasonable because it was predicated on evaluation errors. Comments and Supp. Protest at 31-32. In this regard, JST argues that, had the agency reasonably evaluated the proposals, then it would have determined that JST’s score was higher than Cyntel’s. *Id.*

On July 31, the Air Force notified our Office that it intended to take corrective action. The Air Force explained that it would reevaluate all proposals, document the evaluation record, present the evaluation information to the SSA, and make a new best-value decision consistent with the terms of the solicitation. Notice of Corrective Action at 2. If

the evaluation identified another offeror's proposal as representing the best value, then it would terminate the awarded contract to Cyntel and award a new contract to the successful offeror. *Id.* JST did not note any objection to the scope of the agency's proposed corrective action.

On August 5, our Office dismissed the protest as academic. *JSToogood, LLC d/b/a Joint Strategic Technologies*, B-423600, B-423600.2, Aug. 5, 2025 (unpublished decision). The corrective action rendered the protest academic (*i.e.*, no longer of any practical relevance) because the agency's intention to conduct a new evaluation rendered meaningless any further consideration of the now-abandoned evaluation results and selection decision. *Id.*

On August 15, JST filed this request.

DISCUSSION

JST requests that our Office recommend the agency reimburse the firm for its costs in pursuing its protest, including reasonable attorneys' fees. It argues that the allegations raised in its initial protest were clearly meritorious, and that the agency unduly delayed taking corrective action because the agency took corrective action after the due date for the initial agency report and after the requester filed its comments and the supplemental protest. JST also argues that the supplemental allegations were so intertwined with its initial allegations regarding the agency's evaluation of proposals that investigation by the Air Force of JST's initial protest grounds should have revealed the flaws later identified in the supplemental protest. Thus, JST asserts that it should receive its protests costs associated with filing both the initial and supplemental protests.

In responding to the request, the Air Force concedes that JST's challenges that the agency unreasonably evaluated its past technical experience are clearly meritorious and agrees to pay protest costs associated with the filing of the initial challenges and the supplemental arguments set forth in the requester's comments. Resp. to Req. for Entitlement at 3-4. The agency also agrees to pay the requester's costs associated with the initial allegation that the tradeoff analysis was flawed because such allegation was intertwined with the challenge to the evaluation of the firm's past technical experience. Resp. to GAO Req. for Information at 1.

The Air Force argues however, that the initial allegations challenging Cyntel's past technical experience and past performance evaluations were not clearly meritorious because they were "close questions" to which the agency established legally defensible positions. Resp. to Req. for Entitlement at 4. In this way, the Air Force argues that our Office should deny the request for a recommendation that the agency reimburse the requester for the challenges to Cyntel's past technical experience and past performance. *Id.* As to the supplemental allegations, the Air Force argues that our Office should not recommend the agency reimburse JST for its protests costs because the Air Force took corrective action prior to the supplement report due date and therefore such action was not unduly delayed. See *id.* at 1-3.

Where a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs where, based on the circumstances of the case, 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 in order to obtain relief. 4 C.F.R. § 21.8(e); *TRAX Int'l Corp.--Costs*, B-410441.5, Aug. 26, 2015, 2015 CPD ¶ 276 at 3. A protest is “clearly meritorious” where a reasonable agency inquiry into the protester’s allegations would reveal facts showing the absence of a defensible legal position. *TRAX Int'l Corp., supra*.

In resolving a request for a recommendation for the payment of costs, we generally will recommend that an agency reimburse a requester for its incurred costs with respect to all issues pursued and not merely those which were “clearly meritorious.” See *Genesis Bus. Sys.--Costs*, B-411264.11, Dec. 10, 2015, 2015 CPD ¶ 389 at 3. Nevertheless, in appropriate cases, we will limit our recommendation for the award of protest costs where a part of those costs is allocable to a protest ground that is not “clearly meritorious” and that is so clearly severable from the successful issues as to essentially constitute a separate protest. *Id.* Protest issues are severable when they are not interrelated or intertwined--that is, they do not share a common core set of facts or underlying legal theories. See *id.*

Significantly, this imposition of costs is not intended as an award to prevailing requesters or as a penalty to the agency; rather, it is designed to encourage agencies to take prompt action to correct apparent defects in competitive procurements. *TRAX Int'l Corp., supra*.

Initial Allegations

To begin with, we examine the four challenges raised in the initial protest filing. As noted above, JST challenged the agency’s evaluation of its past technical experience, Cyntel’s past technical experience, Cyntel’s past performance, and the agency’s selection decision. Significantly, the agency agrees with the requester that the challenges to the agency’s evaluation of the requester’s past technical experience and tradeoff analysis are subject to reimbursement but disagrees that the requester should be reimbursed for the challenges to the evaluation of Cyntel’s proposal.

First, we dismiss the requester’s request that it be reimbursed for the challenges to its past technical experience and the tradeoff analysis. Where a requester and agency agree that reimbursement of costs is warranted, our Office will dismiss the challenge as academic because our Office will not render what would be, in effect, a meaningless advisory decision. See *Rice Sols., LLC--Costs*, B-420475.2, Nov. 15, 2022, 2022 CPD ¶ 284 at 2-3 (dismissing part of a requester’s request for costs where the agency conceded that the requester should be reimburse those costs); *Express Medical Transporters, Inc.*, B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 9-10 (protest allegation where the agency granted any relief which GAO would recommend rendered academic

any consideration by GAO and is subject to dismissal). Here, the agency has conceded that these challenges are clearly meritorious or not severable and agreed to reimburse the requester's costs associated therewith. Thus, we dismiss this portion of the request as academic.

Next, given the agreement between the parties and our general rule that a requester should recover all its incurred costs, we must determine whether JST's challenges to the evaluation of Cyntel's past technical experience and past performance are severable from the challenges to the evaluation of the firm's own proposal. After reviewing them, we find that they are not interrelated or intertwined with the challenges to its own evaluation and are therefore severable. Whereas JST's challenge to its past technical experience evaluation was based on the agency's alleged failure to assign partial points and mechanical consideration of qualifying FTEs, JST's challenges to Cyntel's past technical experience and past performance evaluations were based on Cyntel allegedly lacking any relevant experience. While we recognize that both sets of challenges are broadly based on the agency's alleged failure to evaluate proposals consistent with the terms of the solicitation, see Comments on Agency's Resp. to Req. for Entitlement at 5, we think they concern distinct sets of facts arising from two separate proposals and different types of evaluation judgments (*i.e.*, considering whether partial points should have been awarded under the terms of the solicitation to JST versus analyzing whether Cyntel had any relevant experience and past performance). Accordingly, we conclude that JST's challenges to its own evaluation are severable from its challenges to the evaluation of Cyntel's past technical experience and past performance.

JST also argues that its challenges to the evaluation of Cyntel's past technical experience and past performance are independently clearly meritorious. As noted above, JST argued that Cyntel lacked relevant experience and past performance because Cyntel has not performed any contract of similar size or scope. Protest at 15-22. In this regard, JST asserts that any cursory review of Cyntel's work samples would have demonstrated that the firm lacked any relevant experience. Req. for Entitlement at 11.

We disagree. In its report, the agency responded to these allegations with legally defensible positions. The agency examined each of Cyntel's work samples evaluated as "relevant" and explained how the tasks were similar. See MOL at 13-17. For example, the agency noted that one of Cyntel's work samples involved performing intelligence surveillance and reconnaissance support, counterintelligence and human intelligence support, and operations support services, which were similar to the functions to be performed under this requirement, such as gathering and analyzing information and developing and maintaining agency policy documents. *Id.* at 13-14. Further, our review of Cyntel's proposal confirms that the firm represented that it performed such functions on a contract of similar value. See AR Tab 8a, Cyntel Tech. Proposal, Past Tech. Experience, Work Sample 1 at 35-68. Thus, we do not find that these allegations were clearly meritorious because the agency provided a defensible legal position with respect to the specifically alleged error.

JST also argues that its initial allegations concerning Cyntel's past technical experience and past performance were independently clearly meritorious because any reasonable agency examination of Cyntel's referenced work samples would have revealed the various issues JST raised as supplemental allegations. Comments on Agency's Resp. to Req. for Entitlement at 6 ("A reasonable inquiry into JST's initial protest grounds would have alerted the Air Force to the various issues related to the evaluation of Cyntel's proposal identified by JST in its Comments."). As noted above, in its supplemental protest, JST argued that Cyntel's referenced work samples lacked official contract documentation, that the SSA unreasonably disregarded agency evaluators' assessments, and that the Air Force failed to verify reasonably whether Cyntel's FTEs were performing under the claimed labor categories. In this way, JST argues that the supplemental protest allegations are just "continuations" of its initial protest allegations.

As relevant here, our decisions provide that where reasonable investigation of a requester's initial claims should have led the agency to examine the clearly meritorious issues that ultimately result in the corrective action, the promptness of the agency's corrective action is measured from the date of the initial protest, and as a consequence, we will find corrective action to be unduly delayed where not taken by the due date for the initial agency report. See, e.g., *Office Depot, Inc.--Costs*, B-408850.2, Feb. 25, 2014, 2014 CPD ¶ 85 at 5.

In our view, the supplemental allegations are different from those raised in the initial protest and thus, examination of the initial allegations would not have alerted the agency to the existence of the supplemental allegations. The supplemental allegations focus on whether Cyntel's referenced work samples included "official contract documentation" substantiating that Cyntel actually performed the functions which its work samples represented as having been performed or whether its FTEs actually performed under the claimed labor categories, as well as whether the SSA reasonably disregarded the agency evaluators' conclusion. Such challenges are not just "continuations" but rather are distinct from JST's initial challenge that Cyntel generally lacked relevant past technical experience and past performance because the challenges target different aspects of the evaluation as unreasonable. In this way, we disagree that the initial protest allegations would have alerted the agency to the issues raised in the supplemental allegations because the initial allegations did not specifically alert the agency to problems with the evidentiary value of Cyntel's work samples, or any alleged complications resulting from disagreements between agency evaluators and the SSA. Cf. *Facility Servs. Mgmt., Inc.--Costs*, B-402757.5, Sept. 27, 2010, 2010 CPD ¶ 236 at 4 (GAO recommended recovery for supplemental allegation where the initial allegations were sufficiently specific as to demonstrate the precise error referenced in the supplemental allegation).

Based on the foregoing, we dismiss JST's request that the agency reimburse JST the costs associated with its challenge to the agency's evaluation of the requester's past technical experience and the tradeoff analysis because the Air Force has agreed to pay

such costs. We do not recommend that the agency reimburse the requester its costs of challenging Cyntel's past technical experience or past performance.

Supplemental Allegations

Next, we examine whether the supplemental allegations warrant reimbursement. As noted above, JST principally argued that the agency unreasonably scored its referenced work samples; the agency unreasonably evaluated Cyntel's past technical experience due to the firm failing to provide official contract documentation, failure to recognize internal agency disagreement over the relevance of the work samples, and failure to verify that Cyntel's claimed FTEs were accurate; the agency unreasonably evaluated Cyntel's past performance because Cyntel did not provide official contract documentation; and, failed to evaluate reasonably Cyntel's proposed price. The Air Force argues that our Office should not recommend the agency reimburse JST its protest costs for the supplemental allegation because the agency took corrective action prior to the supplemental report due date. See Resp. to Req. for Entitlement at 1-3.

Regarding these remaining supplemental allegations, we decline to recommend reimbursement because we agree with the Air Force that it did not unduly delay taking correction action.² An agency does not unduly delay taking corrective action when it takes such action on or before the due date set for receipt of the report. *Innovative Techs., Inc.--Costs*, B-415810.3, Mar. 12, 2018, 2018 CPD ¶ 107 at 2.

After receiving the requester's comments and supplemental protest, our Office requested that the agency submit its report responding to the supplemental allegations by July 31, 2025. On that due date, the Air Force notified our Office that it would take corrective action, rather than continue to defend against the protest. Thus, we decline to recommend reimbursement of the requester's costs for the remaining supplemental allegations because the agency did not unduly delay taking corrective action

The request is dismissed in part and denied in part.

Edda Emmanuelli Perez
General Counsel

² We also do not find that any of the remaining allegations are intertwined with JST's challenge to its own past technical experience evaluation. The remaining challenges concern Cyntel's technical and price proposal evaluations, and we find that they involve different sets of facts and distinct legal theories.