U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Weston Solutions, Inc.

File: B-424543.2

Date: September 9, 2026

John G. Horan, Esq., Faegre Drinker Biddle & Reath LLP, for the protester.
Damien C. Specht, Esq., James A. Tucker, Esq., Brian E. Doll, Jr., Esq., and Jillian I. Stern, Esq., Morrison & Foerster LLP, for Pond Constructors, Inc., the intervenor.
Robert I. Moore, Esq., and Allen S. Black, Esq., Department of the Army, for the agency.
Kenneth Kilgour, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency failed to evaluate the actual cost of performance of the unpriced contract line item for corrective maintenance is dismissed for failing to state a valid basis of protest when the solicitation provided a plug number for corrective maintenance, offerors were instructed not to price it, and the prices for corrective maintenance service orders were to be negotiated during contract performance on a per service order basis.

2. Protest that the agency unreasonably evaluated the awardee's price proposal as compliant with the solicitation is dismissed because the protester would not be next in line for award if its protest was sustained and is therefore not an interested party to bring its allegation.

DECISION

Weston Solutions, Inc., of West Chester, Pennsylvania, protests the award of a contract to Pond Constructors, Inc., of Peachtree Corners, Georgia, under request for proposals (RFP) No. W912DY26RA002, issued by the Department of the Army for preventive and corrective maintenance of petroleum facilities and systems. Weston, the incumbent contractor, contends that the Army conducted a flawed price evaluation that failed to calculate the actual cost of performing the corrective maintenance service orders and failed to find the awardee's price proposal nonconforming to the solicitation's requirements.

We dismiss the protest.

BACKGROUND

The solicitation, issued in accordance with Federal Acquisition Regulation (FAR) part 15, sought the issuance of a fixed-price contract with a contract period of performance of 3.5 years--one 12-month base, two 12-month options, and one 6-month option. Agency Report (AR), Tab 3, RFP at 16. Award would be made to the offeror whose proposal provided the Army with the best value, considering these factors, listed in descending order of importance: technical and management approach, past performance, small business participation, and price. AR, Tab 3.5, Addendum to 52.212-1 at 10. The technical factors, when combined, were significantly more important than price. *Id*. The reasonableness of the evaluation of the technical factors is not at issue.[1]

For the price factor, offerors had to complete and submit an agency-provided pricing worksheet. *Id.* at 8; AR, Tab 3_7, Pricing Worksheet. This worksheet identified a number of contract line item numbers (CLINs) for preventive maintenance and a separate CLIN for corrective maintenance. AR, Tab 3_7, Pricing Worksheet. For three of the preventive maintenance CLINs (X001-X003), offerors had to propose a separate overall fixed price for multiple locations.[2] *Id.* at CLIN X001-X003 tabs. For the corrective maintenance CLIN X004, the agency provided a set price of $44,363,415 that would be included in the total price calculation for all offerors. *Id.* at CLIN X004 tab. The solicitation explained that corrective maintenance would be performed through the issuance of service orders (SOs) during contract performance and the price for those SOs would be charged to CLIN X004. *Id.*; AR, Tab 3_1, Performance Work Statement (PWS) at 40-41.

Regarding price, the solicitation provided that pricing would be evaluated for fairness and reasonableness in accordance with FAR section 15.404. AR, Tab 3_5, Addendum to 52.212-1, Instructions to Offerors, at 16. The solicitation further advised offerors that the government would evaluate offers for award purposes by adding the amounts proposed for each of the preventive maintenance CLINs for the base and option years to the set price of $44,363,415 for the corrective maintenance CLIN X004. *Id.* at 16; AR, Tab 3_7, Pricing Worksheet, Summary tab. Only offers with fair and reasonable pricing would be considered for award. *Id*. Of relevance to the protester's challenge to the Army's evaluation of Pond's price proposal, the solicitation required that salaries for

[1] Weston withdrew its allegation that the best-value tradeoff analysis "failed to compare and evaluate Weston's more valuable technical approach against Pond's less valuable technical approach in its best value determination." Comments at 2 n.1.

[2] CLINs X005-X007 covered additional prices related to preventive maintenance, such as other direct costs and irregular preventive maintenance. AR, Tab 3_7, Pricing Worksheet.

all key personnel "must be included in the firm fixed price for both onsite and offsite activities." AR Tab 3_1, PWS at 9. Per the PWS, key personnel included the project manager, deputy project manager, quality control manager, safety manager, and site managers. *Id.*

The agency received offers from four firms, including the protester and awardee. AR, Tab 19, Source Selection Document (SSD) at 7. The agency held discussions with Pond and Weston. Contracting Officer's Statement at 3. After discussions, the four proposals received identical adjectival ratings: outstanding for technical and management approach, substantial confidence for past performance, and outstanding for small business participation. AR, Tab 10, Source Selection Board Report at 4. Pond's proposed price of $48,781,556 was lower than Weston's proposed price of $51,861,533. *Id.* Another offeror proposed a price of $50,388,070, which, while higher than Pond's, was lower than the protester's. *Id*.

The source selection authority (SSA) found all offerors' proposed prices fair and reasonable. AR, Tab 19, SSD at 10. The SSA also determined that all four proposals were "considered technically equal and capable." *Id*. The SSA noted that, "[g]iven the equality of the proposals in all non-price factors, price became the sole determining factor in the best-value tradeoff decision." *Id*. at 9. The SSA thus selected Pond's lowest-price proposal as representing the best value to the Army. *Id.* at 10. The agency made award to Pond, AR, Tab 17, Award at 1, and, after a debriefing, AR, Tab 14, Weston Debriefing, Weston filed this protest.

DISCUSSION

Weston asserts that Pond's proposal must be rejected for failure to comply with the solicitation's pricing requirements and for having unbalanced pricing. Comments at 8, 10. The protester also contends that the agency failed to evaluate the actual cost of the corrective maintenance CLIN. Supp. Comments at 12-16. The Army argues that Weston is not an interested party to bring its allegations because, even if GAO were to sustain the protest, the protester is not next in line for award. Supp. Memorandum of Law (MOL) at 6. Weston retorts that, notwithstanding the existence of another lower priced offeror, Weston would be in line for award if this protest was sustained "because the agency's flawed price evaluation affected not only Pond but all offerors[.]" Supp. Comments at 18.

As explained below, we dismiss for failure to state a valid basis of protest the allegation that the agency unreasonably failed to evaluate the actual cost of the unpriced corrective maintenance CLIN. We then agree with the Army that Weston is not an interested party to bring its remaining challenges to the evaluation of Pond's price proposal, and we dismiss those allegations as well.

Failure to Evaluate Actual Cost of Corrective Maintenance CLIN

Weston contends that "[t]he Agency failed to identify, and did not conduct, a price analysis that included any consideration, analysis, or evaluation, of the cost to the government of the Unpriced CLINs[3], despite having the information to conduct such an analysis." Protest at 26. For example, Weston asserts that, "[p]ut simply, the Agency's reliance on total price without any price analysis for offerors' proposals for the Unpriced CLINs, which the agency estimate as approximately 90% of the Contract value, does not bear a rational relationship to what the Agency would actually expect to pay." *Id.* at 27; *see also* Supp. Comments at 11 ("the agency did not conduct a price analysis that included any consideration, analysis, or evaluation of the total cost to the government of the Unpriced CLINs, which constitute approximately 91% of the total Contract value.").

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor will we substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Jensen Promotional Items, Inc.*, B-421884, B-421884.2, Nov. 17, 2023, at 3. Rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id*. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id*.

As noted above, the Army provided offerors with a price worksheet that contained a pre-populated estimate for the cost of corrective maintenance of $44,363,415. AR, Tab 3_7, Price Worksheet, CLIN X004 tab. Offerors were not to separately price that CLIN and the total amount of $44,363,415 would be included when calculating an offeror's total price.[4] As also noted above, under the price factor, the agency would evaluate whether the offeror's total price was fair and reasonable. The solicitation thus contained no provision for a calculation--or evaluation--of an estimated actual cost of performance of the corrective maintenance CLIN.

Instead, during contract performance, the contractor would propose a price for each service order charged to the corrective maintenance CLIN which would be "subject to negotiation"; the final price would be annotated on the service order. AR, Tab 3_1,

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[3] The protester repeatedly refers to unpriced CLINs; the price worksheet contained a single unpriced CLIN--X004 CM NTE. *See* AR, Tab 3_7, Price Worksheet.

[4] The price worksheet instructions stated: "INSTRUCTIONS--**DO NOT PRICE**. The values for CLIN 4 Corrective Maintenance are provided by the Government as an estimate of Corrective Maintenance to be performed in accordance with PWS Sections 3.4 and 3.5. This amount may increase or decrease depending on the needs that arise for unscheduled services. The Contractor is not guaranteed nor entitled to the full amount as estimated." AR, Tab 3_7, Price Worksheet."

PWS at 55. Accordingly, the claim that the Army failed to conduct an evaluation of the actual cost of the corrective maintenance CLIN fails to state a valid basis of protest and is dismissed. *Sigmatech, Inc.*, B-409837, *et al.*, Aug. 22, 2014, at 8.

Evaluation of Pond's Price Proposal

Weston asserts the Army "should have rejected Pond's proposal for failure to comply with the Solicitation's instructions" because it is evident that Pond's "Fixed Price CLINS did not include all the components required under the Solicitation." Protest at 24-25, 27. The protester also argues that the agency failed to evaluate Pond's proposal for unbalanced pricing where Pond allegedly proposed "understated and unreasonable . . . prices for the Fixed Price CLINs and overstated and unreasonable . . . prices for the [u]npriced CLINs."[5] Comments at 11.

The Army argues that Weston is not an interested party to raise these allegations because it would not be next in line for award even if the agency's evaluation was improper and Pond should have been deemed ineligible. Supp. MOL at 5-6. In this regard, the agency notes that Weston withdrew its challenge to the agency's best-value conclusion that all offerors were technically equal and that price was the determining factor. *Id.*

Weston responds to the agency's argument and for the first time contends that the agency's "flawed price evaluation affected not only Pond but all offerors." Supp. Comments at 18. On this record, we agree with the agency that Pond is not an interested party.

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[5] The FAR provides that

> (g) Unbalanced pricing. (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when-
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> > (i) Startup work, mobilization, first articles, or first article testing are separate line items;
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> > (ii) Base quantities and option quantities are separate line items; or
> >
> > (iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

FAR 15.404-1(g).

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). In a post-award context, we have generally found that a protester is an interested party to challenge an agency's evaluation of proposals only where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *Gulf Civilization Gen. Trading & Contracting. Co.*, B-419754, B-419754.2, June 10, 2021, at 7. Where there is an intervening offeror who would be in line for the award even if the protester's challenge was sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify as an interested party. *Id*.

We agree with the agency that Weston is not an interested party to bring this allegation.[6] As discussed above, we dismissed for failure to state a valid basis of protest Weston's challenge that the Army failed to evaluate the actual cost of performance of the corrective maintenance CLIN. Weston has not otherwise challenged the agency's best-value tradeoff conclusion that all offerors were technically equal and that price therefore became the determining factor. Thus, even if GAO were to sustain the protester's challenge to the evaluation of Pond's price proposal, the intervening offeror--not Weston--would be next in line for award.

[6] Weston also challenges the best-value tradeoff analysis, asserting that it was unreasonably based on a flawed price evaluation. Protest at 27. This allegation is based on complaints that we have rejected. Accordingly, we dismiss the challenge to the best-value tradeoff because allegations based on rejected claims do not establish a basis of protest. *ManTech Advanced Sys. Int'l, Inc.*, B-421749 *et al.*, Aug. 29, 2024, at 12 n.15.

Because the protester would not be next in line for award, even if we were to sustain its remaining allegations, the protester is not an interested party to challenge the evaluation of Pond's proposal.[7]

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

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[7] In its protest and comments on the agency report, Weston limited its other challenges specifically to the agency's evaluation of the awardee's price; it did not assert that other offerors failed to include all components under the fixed price CLINs or that other offerors had proposed unbalanced pricing. It was not until its response to the agency's interested party argument that Weston argued for the first time that the evaluation errors affected all offerors. Weston could have broadly alleged an unreasonable price evaluation that affected all offerors in its initial protest but instead raised this argument in a piecemeal fashion. We do not accept the piecemeal presentation of protest grounds. *B. French Consulting GmbH*, B-421515, May 9, 2023, at 5 n.6 (noting that GAO's regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety).

Moreover, Weston does not otherwise explain how the intervening offeror failed to comply with the solicitation or proposed unbalanced pricing. Accordingly, there is no valid challenge to this intervening offeror.