



GAO

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

Comptroller General  
of the United States

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** Sevatec, Inc.--Costs

**File:** B-407880.3

**Date:** June 27, 2013

---

Antonio R. Franco, Esq., Kathryn V. Flood, Esq., Megan C. Connor, Esq., and Brian F. Wilbourn, Esq., PilieroMazza PLLC, for the protester.  
Adam Sleeter, Esq., Federal Highway Administration, for the agency.  
Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

GAO recommends reimbursement of protest costs where agency unduly delayed taking corrective action in response to clearly meritorious protest challenging agency's evaluation of technical proposals.

---

### DECISION

Sevatec, Inc., requests that this Office recommend reimbursement of the costs Sevatec incurred in filing and pursuing its protest challenging the award of a contract by the Department of Transportation, Federal Highway Administration (FHWA), to Tantus Technologies, Inc., pursuant to request for proposals (RFP) No. DTFH61-12-R-00054, for information technology services. The procurement was a 100% set-aside for section 8(a) small businesses.

We grant Sevatec's request in part and deny it in part.

The RFP sought proposals to furnish all necessary facilities, materials, and personnel to perform technical, non-personal services in support of FHWA's Office of Technical Services. The solicitation contemplated award of an indefinite-delivery/indefinite-quantity contract, for a base year with 4 option years, to the offeror whose proposal represented the "best value" considering four factors (in descending order of importance): technical/management approach, staffing/experience, past performance, and price/cost. The technical and staffing factors included multiple subfactors and were evaluated on a numerical score basis, while past performance was evaluated on an adjectival/color basis.

The RFP included labor categories, setting forth duties and recommended experience and education for each category. RFP § C.4. Offerors proposing personnel deviating from the recommended experience/education were required to provide adequate explanations to justify each deviation. Id. In addition, offerors were required to submit a resume for each position listed in the statement of work (SOW). Also, for all personnel not currently members of the offeror's staff, offerors were to submit an original letter of commitment and agreement to serve as planned.

In the consensus evaluation, Tantus's proposal received a higher score (87.25 points) than did Sevattec's ([deleted]) under the technical and staffing factors, while both proposals were rated the same ([deleted]) under the past performance factor. The contracting officer, as source selection authority, found Tantus's proposal offered various unique strengths which, compared with Sevattec's weaknesses, justified making the award to Tantus at a higher evaluated cost/price. Sevattec's protest followed.

In challenging the agency's evaluation and best value determination, Sevattec asserted that Tantus had engaged in an improper "bait and switch" regarding its proposed personnel, including an alleged plan to use Sevattec personnel without furnishing the required resumes and letters of intent for such personnel. Additionally, Sevattec protested virtually every aspect of the agency's evaluation of its own proposal, as well as its past performance evaluation rating, which it asserted should have been higher based upon its incumbent performance. The agency report (AR) included a detailed response to all of Sevattec's protest grounds, including concessions that some of Sevattec's evaluation issues had merit, but argued that they did not prejudice the protester. The AR also included evidence that Tantus had not engaged in a bait and switch tactic, *i.e.*, that it had not proposed one slate of personnel, intending to or actually having replaced them with the incumbent's personnel after award.

In its comments to the AR, Sevattec reiterated each of its technical evaluation challenges and added supplemental grounds of protest. These supplemental grounds asserted that the agency failed to adequately evaluate 22 of the 44 resumes submitted by Tantus for the SOW-listed personnel and that Tantus's staffing proposal failed to demonstrate compliance with the required limitations on subcontracting. The agency submitted a supplemental AR responding to Sevattec's supplemental protest grounds and providing additional detail to rebut Sevattec's comments. As in its initial AR, the agency conceded that Sevattec was correct with regard to the evaluation of some of Tantus's resumes, but again maintained that Sevattec was not prejudiced.

Following the receipt of comments from the protester and intervenor, the GAO attorney handling the protest conducted an outcome prediction, alternative dispute resolution (ADR) conference call with the parties. During the call, he advised the parties that the protest would likely be sustained on the basis of flaws in the

agency's evaluation of Tantus's resumes and on the agency's concession regarding the assignment of weaknesses in the evaluation of Sevattec's proposal. In response, the agency advised our Office that it would take corrective action, explaining that it would re-evaluate Sevattec's and Tantus's staffing and technical proposal volumes, and reserving the right to enter into discussions with the offerors. Accordingly, we dismissed Sevattec's protests as academic (B-407880, B-407880.2, Mar. 5, 2013).

Sevattec then submitted this request for our recommendation that it be reimbursed its reasonable costs of filing and pursuing its protest. Request for Reimbursement, Mar. 7, 2013. We grant Sevattec's request in part and deny it in part.

When a procuring agency takes corrective action in response to a protest, we may recommend that the agency reimburse the protester its 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. Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2013); Pemco Aeroplex, Inc.--Recon. and Costs, B-275587.5, B-275587.6, Oct. 14, 1997, 97-2 CPD ¶ 102 at 5. Nevertheless, we will not recommend reimbursement of protest costs in every case where an agency takes corrective action but, rather, only where an agency delays taking corrective action in the face of a clearly meritorious protest allegation. Information Ventures, Inc.--Costs, B-294580.2 et al., Dec. 6, 2004, 2004 CPD ¶ 244 at 2; Triple Canopy, Inc.--Costs, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 2-3. Generally, where an agency takes corrective action by the due date of its report, we regard the action as prompt, and will not consider a request to recommend reimbursement of protest costs. A-Ability Med. Equip., Inc.-Costs, B-403256.3, Apr. 4, 2011, 2011 CPD ¶ 81 at 2. Further, we will not recommend that a protester's recovery of protest costs extend to issues that are not clearly meritorious where such issues are clearly severable from clearly meritorious issues. See Sodexho Mgmt., Inc.--Costs, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 29.

Here, the record shows, and the agency agrees, that Sevattec's protest included issues for which the recovery of protest costs is appropriate. Agency Response at 5. Specifically, these include the agency's failure to adequately evaluate the Sevattec and Tantus staffing proposals and the technical evaluation issues involving training plans, invitational travel, and management of a SharePoint site. Id.

FHWA, however, maintains that the core facts relating to over a dozen of Sevattec's other issues concerning the evaluation of its technical proposal, including, for example, challenges to a variety of other assessed weaknesses, and the challenge to the best value determination, are unrelated to the protest grounds covered in the outcome prediction ADR conference. Id. at 4. We disagree. In our view, these other issues share common factual bases; both the meritorious and non-meritorious issues are intertwined and interrelated with the agency's flawed technical

evaluation. See The Salvation Army Community Corrections Program--Costs, B-298866.3, Aug. 29, 2007, 2007 CPD ¶ 165 at 7. Under the circumstances presented here, these technical evaluation issues are not severable. Furthermore, since the corrective action occurred only after the ADR, that is, well after the submission of an agency response to these issues, the corrective action clearly was unduly delayed. Thus, we recommend reimbursement of Sevatec's protest costs that are reasonably related to pursuit of the issues regarding the technical evaluation and best value determination.

In contrast, none of the other protest allegations raised by Sevatec meet the standard for recommending recovery of protest costs. In this regard, as expressed by the GAO attorney in the ADR conference, nothing in the record indicated that there was any merit to Sevatec's allegations concerning bait and switch, flaws in Sevatec's past performance evaluation, or Tantus's alleged violation of the subcontract limitation. Further, we view these issues as severable since they do not share the same commonality of facts as the other technical evaluation issues. Accordingly, we decline to recommend reimbursement of Sevatec's protest costs with regard to these protest issues.

Sevatec's request for our recommendation that it be reimbursed its protest costs is granted in part and denied in part.

Susan A. Poling  
General Counsel