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Decision

Matter of: Best Value Technology, Inc.--Costs

File: B-412624.3

Date: February 6, 2017

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DIGEST

Protester's request for a recommendation that it be reimbursed its costs of filing and pursuing its protest is granted, where the record shows that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest.

DECISION

Best Value Technology, Inc. (BVTI), of Haymarket, Virginia, requests that we recommend that it be reimbursed the reasonable costs of filing and pursuing its protest of the award of a contract to Sierra7, Inc., of Reston, Virginia, under request for proposals (RFP) No. VA119-15-R-0217, issued by the Department of Veterans Affairs (VA) for auditing support services. We dismissed the protest after the agency advised our Office that it would take corrective action by cancelling the awarded contract. BVTI argues that its protest was clearly meritorious and that the agency unduly delayed taking corrective action.

We grant the request.

BACKGROUND

On September 4, 2015, the VA issued the RFP as a set-aside for service-disabled veteran-owned small businesses. RFP at 7.¹ The solicitation sought auditing

¹ Except where expressly indicated otherwise, citations to pages in the record are to the Bates-numbered pages added by the agency in its report responding to the protest.

support services. Performance Work Statement (PWS) at 89. Offerors were informed that award would be made on a best-value basis consisting of the following three evaluation factors, in descending order of importance: technical approach, past performance, and price. RFP at 66-67. The RFP provided that the two non-price factors, when combined, were more important than price. RFP at 67. The technical approach consisted of three subfactors of equal importance: understanding of the work, staffing approach, and teaming/subcontractor approach. RFP at 60-62. The non-price factors would be assigned one of the following adjectival ratings: excellent, good, satisfactory, marginal, unsatisfactory, or neutral/unknown. Id. at 67.

The evaluation results for BVTI and Sierra7 were as follows:

Offeror	Technical Approach	Past Performance	Price
BVTI	Satisfactory	Good	\$30,588,255.97
Sierra7	Good	Satisfactory	\$31,313,904.32

Agency Report (AR), Exh. 3.1, Source Selection Decision Memorandum (SSDM), at 26. The source selection authority (SSA) concluded that award to Sierra7 was in the government’s best interest because Sierra7 “attained the highest available rating for technical approach, performance risk, and their proposed price was determined to be fair and reasonable.”² Id. at 27. The SSA further concluded that Sierra7’s rating on the non-price factors justified a two percent price premium over BVTI’s lower-priced proposal. Id.

On December 31, 2015, the agency notified BVTI that its proposal was not selected for award. BVTI requested a debriefing, which the agency provided telephonically on January 4, 2016. On January 10, 2016, BVTI filed a timely protest with this Office challenging the agency’s technical and past performance evaluations of BVTI’s and the awardee’s proposals. On February 10, the agency submitted a report responding to the protest. In response to BVTI’s objections and at our Office’s request, additional relevant documents were produced by the agency on February 17, and 22, respectively.

² After having correctly noted that Sierra7’s proposal was assigned a rating of “good” and “satisfactory” under the technical approach and past performance factors, respectively, the SSA erroneously referred to Sierra7’s proposal as having “attained the highest available rating” for the non-price factors. AR, Exh. 3.1, SSDM, at 26, 27. BVTI raised this issue in its supplemental protest. Comments & Supp. Protest, Feb. 24, 2016, at 32.

On February 24, BVTI filed its comments and supplemented its initial protest. Comments & Supp. Protest, Feb. 24, 2016. In its comments, the protester argued, among other things, that the agency failed to provide a substantive response to its initial protest grounds and, therefore, that our Office should find that the agency had conceded the merits of the protest grounds. See e.g., id. at 3. On February 25, our Office requested an agency report responding to the supplemental protest grounds. We also requested a more substantive response to the initial protest grounds.

On February 26, the agency filed a notice of corrective action indicating that it intended to terminate the contract and “conduct further acquisition planning.” Agency Notice, Feb. 26, 2016. Our Office dismissed the protest as academic on March 3. BVTI subsequently filed a timely request that our Office recommend that the VA reimburse the company the costs associated with filing its protest. The protester argues that its protest was clearly meritorious and that the VA unduly delayed taking corrective action. BVTI Req. for Costs, Mar. 17, 2016, at 3.

The VA disputes the protester’s claim that its protest was clearly meritorious. VA Opposition (Opp’n) to Costs, Apr. 1, 2016, at 2. The VA also disputes that the agency unduly delayed taking corrective action. In this regard, the agency contends that BVTI’s protest put the contracting officer on notice of a potential Procurement Integrity Act (PIA) violation by the agency’s own evaluators. Id. at 2-3. As a result of this discovery, the VA explains that it “announced its intent to take corrective action as soon as [the potential violation] became apparent and there was sufficient evidence with which to justify such a change of course.” Id. at 2. With respect to the merits of BVTI’s protest grounds, the agency argues that “[i]n the interest of brevity; rather than argue the merits of a case, now ruled moot,” the VA contends only that “the instant protest is and was nowhere near a level of merit where any reasonable agency would have provided the relief sought therein.” Id.

DISCUSSION

Our Office may recommend reimbursement of protest costs, including reasonable attorneys’ fees, if, 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. Competition in Contracting Act (CICA) of 1984, 31 U.S.C. § 3553(c)(1)(A); Bid Protest Regulations, 4 C.F.R. § 21.8(e); East Coast Nuclear Pharmacy--Costs, B-412053.5, Aug. 31, 2016, 2016 CPD ¶ 249 at 3. A protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. East Coast Nuclear Pharmacy--Costs, supra; Chase Supply, Inc.--Costs, B-411849.3, May 17, 2016, 2016 CPD ¶ 134 at 5.

In its protest, BVTI challenged the agency's evaluation of offerors' proposals under the technical approach and past performance factors. For the reasons discussed below, we find BVTI's protest allegations to be clearly meritorious and conclude that the agency unduly delayed taking corrective action in response to BVTI's protest.

Before addressing the merits of BVTI's protest, we address a preliminary argument raised by the VA. In its opposition to BVTI's request for protest costs, the VA focuses, almost entirely, on its rationale for taking corrective action, *i.e.*, that, as a result of BVTI's protest, the agency discovered a potential violation of the PIA by agency evaluators. VA Opp'n to Costs at 2-3. The agency's rationale for taking corrective action, however, is unrelated to the question of whether the agency unduly delayed taking corrective action in the face of a clearly meritorious protest.³ For this reason, the merits of BVTI's protest are not "moot," as the agency contends, *id.* at 2, but rather, squarely before us in this matter.⁴

Technical Approach Evaluation

In its protest, BVTI challenged the VA's evaluation of its proposal under the technical approach factor. BVTI contended, among other things, that the VA erroneously assigned BVTI's technical proposal one significant weakness and several weaknesses under the "understanding of the work" subfactor based upon the VA's conclusion that the proposal provided descriptions of performance

³ If anything, the agency's rationale supports BVTI's request for reimbursement of its protest costs because, as the agency concedes, it is only through BVTI's protest that the potential PIA violation was brought to light. VA Opp'n to Costs at 3 (BVTI's "allegations . . . put the [contracting officer] on notice of potential PIA violations of evaluators."). One of the fundamental goals of the bid protest provisions of CICA is to empower disappointed bidders to act as private attorney generals, Alsalam Aircraft Co.--Costs, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 at 7 n.4, and to "relieve[] a protester of the financial demands of acting as a private attorney general where it brings to light an agency's failure to conduct a procurement in accordance with law and regulation[.]" E & R, Inc.--Costs, B-255868.2, May 30, 1996, 96-1 CPD ¶ 264 at 3.

⁴ The VA also argues that BVTI's request for costs "runs afoul [of] equity and fairness" because BVTI is the incumbent and is being compensated for continued performance of the contract during the agency's corrective action. VA Opp'n to Costs at 3. We disagree. The compensation BVTI receives under the terms of its contract with the VA is consideration for rendering services to the VA. Such payments are entirely distinct from the reimbursement of protest costs in situations in which our Office determines that an agency has unduly delayed taking corrective action in response to a clearly meritorious protest.

methods that were too general.⁵ Protest at 2, 15-19; Comments at 19-24. The protester contends that the VA improperly relied upon isolated paragraphs within its technical proposal, and failed to consider BVTI's technical proposal as a whole. Comments at 21. BVTI also contends that the agency assigned multiple weaknesses for the same perceived flaw in BVTI's technical proposal, thus exaggerating the importance of the subfactor. *Id.* at 23-24. We have reviewed the record and find BVTI's challenge to the agency's technical evaluation to be clearly meritorious.

The record reflects that the VA, relying upon one paragraph in BVTI's technical proposal, assigned the proposal a significant weakness under the "understanding of the work" subfactor because the VA determined that the proposal failed to provide sufficient detail regarding BVTI's "agile" audit process and how such a process would satisfy paragraph 5.1.5 of the PWS. AR, Tab 3.1, SSDM, at 6 (citing AR, Tab 5, BVTI Technical Proposal, at 14). Although BVTI concedes that its "agile management process" approach was not addressed in great detail in the cited paragraph, it argues that other sections of its technical proposal supplemented this paragraph and provided additional specificity regarding how it would perform the requirements of the PWS. Comments at 22-23 & n.76 (citing AR, Tab 5, BVTI Technical Proposal, at 10-13, 15, 18, 19).

The VA did not address this protest ground at all in its agency report. The VA also failed to respond to this allegation in its opposition to the protester's request for costs. Thus, if the VA has a defensible position, it has yet to reveal it. Because the VA elected not to respond to the protester's arguments, and does not appear to contest the merits of the protester's arguments, we view the agency as having effectively conceded that the evaluation of BVTI's technical proposal was not reasonable in this respect. TriCenturion, Inc.; SafeGuard Servs., Inc., B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 17 (sustaining a protest ground where the agency did not respond to the merits of the protester's arguments).

Alternatively, to the extent the VA did not intend to concede this issue, its response does not provide us with a basis to conclude that the evaluation was reasonable. Rather, we agree that BVTI's technical proposal, when considered as a whole, provided more detail regarding its agile process and its approach to satisfy the PWS than is set forth in the isolated paragraph cited by the agency in its evaluation. The record does not indicate that the agency considered these other portions of BVTI's proposal in conjunction with the cited paragraph. Accordingly, without further explanation, we find the VA's evaluation to be unreasonable where the

⁵ A significant weakness was defined as "a flaw that appreciably increases the risk of unsuccessful contract performance"; a weakness was defined as "a flaw in the proposal that increases the risk of unsuccessful contract performance." AR, Exh. 8.2, Source Selection Evaluation Plan (SSEP), at 8.

record shows that the VA considered only a single paragraph, concluding that the proposal, as a whole, lacked detail regarding BVTI's agile process.

We further find that the agency's error was compounded by the fact that it assigned at least two, and possibly three, additional weaknesses for the same perceived lack of detail regarding BVTI's agile process and ability to satisfy paragraph 5.1.5 of the PWS. See AR, Exh. 3.1, SSDM, at 5-6 (first, third, and fourth bulleted weaknesses under paragraph (3)). In doing so, the agency "double counted" this perceived weakness, effectively exaggerating this area of the evaluation. We have found such repeated consideration of a weakness to be improper.⁶ Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 4.

Past Performance Evaluation

In its protest, BVTI also challenged the agency's evaluation of BVTI's and the awardee's past performance. In challenging the agency's evaluation of BVTI's past performance (and that of its proposed subcontractor), BVTI alleged that the agency's evaluation was based on factual inaccuracies. Protest at 2, 5-14. BVTI also alleged that the VA selectively relied on older, less relevant past performance reports, while failing to consider the more recent, more relevant reports pertaining to the same projects.

In its agency report, the agency failed to address or rebut the merits of BVTI's arguments, stating only, in a conclusory fashion, that the agency complied with the solicitation. See Memorandum of Law (MOL) at 2-3; Contracting Officer's Statement (COS) at 12-13. The VA also failed to respond to this allegation in its opposition to the protester's request for costs. Because the VA elected not to respond to BVTI's arguments concerning the evaluation of its past performance, and does not appear to contest the merits of the protester's arguments, we view the agency as having effectively conceded that its evaluation was not reasonable. TriCenturion, Inc.; SafeGuard Servs., Inc., supra, at 17. Alternatively, to the extent the agency did not intend to concede this issue, its responses do not provide us with a basis to conclude that the evaluation was reasonable. As set forth below, our review of the record confirms BVTI's allegations that the agency's evaluation of BVTI's past performance was unreasonable and based upon factual inaccuracies.

⁶ Although we have held that an agency is not precluded from considering an element of a proposal under more than one evaluation criterion where the element is relevant and reasonably related to each criterion under which it is considered. See e.g., InnovaTech, Inc., B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 6; RAMCOR Servs. Grp., Inc., B-276633.2 et al., Mar. 23, 1998, 98-1 CPD ¶ 121 at 9, the record did not support such a conclusion here.

BVTI's past performance rating of "good" was based on six past performance references--three submitted by BVTI and three obtained by the agency from the Contractor Performance Assessment Reporting System (CPARS). AR, Exh. 3.1, SSDM, at 16-19. The three references submitted by BVTI, including two pertaining to the incumbent contract with the VA, contained superlative ratings.⁷ AR, Exh. 3.2, BVTI Past Performance Information, at 93-94, 99-100, 106-07. Collectively, the projects earned 33 "excellent" ratings and six "very good" ratings. Id. There are no ratings less than "very good" for any of these projects.

Despite these positive past performance references, the record reflects that the VA assigned three significant weaknesses to BVTI's past performance and downgraded its overall rating to "good" based upon ratings contained in three CPARS reports. AR, Exh. 3.1, SSDM, at 49-50. We find the agency's decision, in this respect, to be unsupported by the record. A few representative examples are provided below.

For instance, the agency assigned a significant weakness to BVTI's past performance after concluding that BVTI's proposed subcontractor received a "marginal" rating for its management of key personnel on a contract performed for another agency. AR, Exh. 3.1, SSDM, at 18. The CPARS evaluation for this contract, however, indicates that the subcontractor received a "satisfactory" rating, not a "marginal" rating. AR, Exh. 6, Subcontractor CPARS, at 161. The record shows that this erroneous finding not only impacted BVTI's overall past performance rating, but also impacted the overall award decision as it was specifically referenced in the source selection decision. AR, Exh. 3.1, SSDM, at 18.

To provide another example, the VA assigned BVTI a significant weakness based upon a CPARS evaluation indicating that BVTI received a "marginal" rating while performing an indefinite-delivery, indefinite-quantity (IDIQ) contract for the Department of Homeland Security (DHS).⁸ AR, Exh. 3.1, SSDM, at 17-18. The "marginal" rating was a result of BVTI's alleged late submission of three reports.⁹ Id.

⁷ One reference described BVTI's performance and the other reference described BVTI's proposed subcontractor's performance. AR, Exh. 3.2, BVTI Past Performance Information, at 95-107.

⁸ As BVTI correctly notes in its protest, Protest at 6 n.6, the agency mistakenly attributed this contract to BVTI's proposed subcontractor. AR, Exh. 3.1, SSDM, at 49-50. The CPARS report very clearly indicates that BVTI was the contractor. AR, Exh. 6, BVTI CPARS, at 134.

⁹ BVTI submitted a rebuttal to DHS, contending that it submitted only one of the three reports late. AR, Exh. 6, BVTI CPARS, at 135. DHS did not respond to BVTI's rebuttal in the CPARS evaluation. Id.

In August 2009, BVTI was selected by DHS as an awardee of a \$1.5 billion multi-award IDIQ contract. AR, Exh. 6, BVTI CPARS, at 134. The CPARS evaluation considered by the VA in its past performance here covered the fourth year of the contract, from August 2012 through August 2013. During this year, DHS assigned BVTI a “marginal” rating in the areas of quality and schedule due to the late submission of the three reports. Id. at 134-35. Other areas were rated as “very good.” Id. at 134.

This same CPARS evaluation shows, however, that during the first three years of the contract, from August 2009 through August 2012, BVTI timely submitted all deliverables and received ratings of “very good” in these same areas. Id. at 134-35. Additionally, in the two subsequent and more recent CPARS evaluations for this contract, ending in August 2014 and August 2015, respectively, DHS assigned BVTI a “very good” rating in these same areas. Id. at 136-37, 139-40. Moreover, these more recent CPARS evaluations contained numerous comments reflecting positively on BVTI’s ability to submit timely deliverables, such as “[t]he Contractor has done a very good job in meeting the schedule for required deliverables” and “[a]ll contract deliverables have been found accurate and received on time.” Id. at 137.

There is no documentation in the record to explain why the agency failed to consider, or ignored, the more recent, positive CPARS evaluations pertaining to this same IDIQ contract. There is also no explanation of why the agency believed that, despite the more recent positive performance on the same contract, BVTI’s late submission of three reports in the rating period of August 2012 through August 2013 appreciably increased the risk of unsuccessful contract performance to warrant a significant weakness. Additionally, because the VA elected not to respond to BVTI’s arguments, the VA has offered no basis upon which to determine that the agency’s evaluation was reasonable.

An evaluation of an offeror’s past performance is unreasonable if an agency disregards positive information relevant to an evaluation factor and focuses exclusively upon allegedly adverse information. See e.g., DKW Commc’ns, Inc., B-411182, B-411182.2, June 9, 2015, 2015 CPD ¶ 178 at 8 (sustaining protest where agency ignored relevant positive past performance information and instead relied exclusively upon adverse information). See also Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 13 (sustaining protest where agency ignored relevant information when evaluating protester’s proposal). Similarly, agencies must consider any adverse past performance information in the context of an offeror’s positive past performance information. See e.g., Green Valley Transport, Inc., B-285283, Aug. 9, 2000, 2000 CPD ¶ 133 at 6-7 (sustaining protest where agency failed to consider negative past performance information against a backdrop of the offeror’s large volume of non-problematic work). Agencies also must consider general trends in a contractor’s performance.

Federal Acquisition Regulation (FAR) § 15.305(a)(2)(i); World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 7.

The record here contains no supporting information or evidence showing that the agency considered the more recent CPARS evaluations. Nor does the record contain a justification for the weight the VA afforded the more dated CPARS evaluation or the rationale for its assignment of a significant weakness.¹⁰

As noted above, in its protest, BVTI also challenged the VA's evaluation of Sierra7's past performance. BVTI contended that the VA's rating of Sierra7's proposal as "satisfactory" under the past performance factor was unreasonable because Sierra7 does not possess sufficient relevant performance to warrant such a rating. Protest at 2. In its report, the agency again failed to provide a detailed substantive response to BVTI's allegations. See MOL at 4; COS at 23. Rather, the agency's memorandum of law simply asserts that "[t]he evaluation was conducted in accordance with the solicitation[;]" "[t]here was sufficient past performance to conduct a meaningful review and come to a reasonable consensus under the standards set forth by GAO[;]" and "[t]he Protester's assertion that it was not, is false." MOL at 4. The agency also argued that, even if BVTI's allegations in this respect were true, BVTI was not prejudiced by any alleged errors because "[t]he record indicates that Sierra7 had a superior technical approach (and lower price)." Id. Contrary to the agency's contentions, the record does not demonstrate that the VA had a reasonable basis for assigning Sierra7's proposal a past performance rating of "satisfactory."

Regarding the past performance factor, the RFP stated that the agency would base its evaluation upon past performance questionnaires (PPQs) pertaining to projects identified and described by the offerors in their proposals. RFP at 68. In this respect, the solicitation required offerors to identify and describe a maximum of five projects that "are relevant to the efforts required by this solicitation." Id. at 185. Of relevance here, the RFP stated that at least two of the projects must pertain to contracts performed by the prime contractor. Id. at 64, 185. The RFP further provided that the agency would evaluate all PPQs and their related projects for quality, timeliness, and relevance.¹¹ Id. at 68.

¹⁰ To be clear, our decision here does not stand for the proposition that it is per se unreasonable for an agency to downgrade an offeror's past performance rating based upon an older assessment of performance. Here, however, where no explanation has been supplied by the agency, we are unable to conclude that the agency's evaluation was reasonable.

¹¹ The RFP stated that "[a]reas of relevance include projects of similar size and scope that cover areas of the PWS." RFP at 185.

The record reflects that Sierra7 identified and described five projects in its proposal—two for itself and three for its subcontractors. AR, Exh. 4, Sierra7 Proposal, at 78-82.¹² The agency determined, however, that the two projects Sierra7 submitted for itself were not relevant to the effort solicited here. AR, Exh. 3.1, SSDM, at 22 (referring to Sierra7’s Freedom of Information Act program management services contract); Exh. 8.10, Consensus Past Performance Evaluation, at 65 (referring to Sierra7’s help desk services contract). Nonetheless, the source selection decision reveals that the agency relied favorably upon these projects in evaluating Sierra7’s past performance and assigning it a rating of “satisfactory.” AR, Exh. 3.1, SSDM, at 22 (discussing the two PPQs pertaining to contracts performed by Sierra7).

An agency is required to consider, determine, and document the similarity and relevance of an offeror’s past performance information as part of its past performance evaluation. Rotech Healthcare, Inc., B 413024 et al., Aug. 17, 2016, 2016 CPD ¶ 225 at 5; Phillips Healthcare Informatics, B-405382.2 et al., May 14, 2012, 2012 CPD ¶ 220 at 9; see FAR §15.305(a)(2). As a general matter, the evaluation of an offeror’s past performance, including the agency’s determination of the relevance and scope of an offeror’s performance history to be considered, is a matter within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. Rotech Healthcare, Inc., supra, at 5. We will question an agency’s evaluation conclusions, however, where they are unreasonable or undocumented. Id.; Clean Harbors Envtl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. The critical question is whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation’s evaluation scheme, and whether it was based upon relevant information sufficient to make a reasonable determination of the offeror’s past performance. DRS C3 Sys., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 22. Here, the record simply does not demonstrate that the agency had a reasonable basis for assigning Sierra7’s proposal a past performance rating of “satisfactory” after the agency evaluators concluded that Sierra7 failed to submit at least two relevant projects pertaining to its own performance, as required by the RFP.

Moreover, although the agency argues that BVTI was not prejudiced by any errors in the agency’s past performance evaluation because Sierra7 had a superior technical approach and a lower price, MOL at 4, this assertion is unsupported by the record. The agency evaluators found that BVTI’s proposal, not Sierra7’s proposal, offered the lower total evaluated price.¹³ AR, Exh. 3.1, SSDM, at 26.

¹² The Bates-numbers are obscured in this document. The page citations refer to the electronic pages numbering instead.

¹³ BVTI claims that the agency made this same erroneous representation to the protester during its debriefing. Comments at 3-4. The record shows that the agency
(continued...)

Moreover, as we discuss below, BVTI has successfully challenged the agency's technical evaluation. Thus, we conclude that there was a reasonable possibility of prejudice. Valor Healthcare, Inc., B-412960, B-412960.2, July 15, 2016, 2016 CPD ¶ 206 at 8 (“[W]e resolve doubts regarding prejudice in favor of the protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest.”).

Undue Delay

As set forth above, our Office may only recommend reimbursement of protest costs if we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. East Coast Nuclear Pharmacy--Costs, *supra*, at 5-6. 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.* at 6; Professional Landscape Mgmt. Servs., Inc.--Costs, B-287728.2, Nov. 2, 2001, 2001 CPD ¶ 180 at 5. In this respect, we review the record to determine whether the agency took appropriate and timely steps to investigate and resolve the impropriety without litigating the case. JRS Staffing Services--Costs, B-410098.6 *et al.*, Aug. 21, 2015, 2015 CPD ¶ 262 at 7.

With regard to BVTI's clearly meritorious protest, we find that the agency unduly delayed taking corrective action. BVTI raised these grounds in its initial January 10 protest. The VA filed its agency report on February 10. On February 24, BVTI filed its comments and a supplemental protest largely expanding on the grounds raised in its initial protest. On February 26, the agency notified our Office of its intent to take corrective action. As a result, we find that the agency's corrective action was unduly delayed.

(...continued)

mistakenly informed BVTI during the debriefing that (a) its total evaluated price was \$31,588,255.97, which would make its price higher than the awarded price, and (b) the agency did not make any adjustments to the offerors' prices. Protester's Supp. Exh. 1, Debriefing. Instead, BVTI's total evaluated price was lower than Sierra7's price and the agency indeed adjusted all offerors' prices. AR, Exh. 3.3, Price Analysis Memorandum, at 4-5. BVTI claims that this “misrepresentation” could have dissuaded it from filing a protest. Although our Office will not review a protester's contention that the debriefing it received was inadequate, *see e.g.*, Software Engineering Servs. Corp., B-411739, Oct. 8, 2015, 2015 CPD ¶ 315 at 5, we note that the flaw in the debriefing appears emblematic of the flaws that plagued this procurement.

RECOMMENDATION

We recommend that BVTI be reimbursed its reasonable costs incurred with respect to all issues pursued in its initial and supplemental protests. See id. BVTI should file its claim for costs, detailing and certifying the time expended and costs incurred, with the agency within 60 days of receipt of this recommendation. 4 C.F.R. § 21.8(f)(1).

The request that GAO recommend reimbursement of protest costs is granted.

Susan A. Poling
General Counsel