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Decision

Matter of: Veterans Evaluation Services, Inc.; Logistics Health, Inc.; Medical Support Los Angeles, a Medical Corporation

File: B-412940; B-412940.2; B-412940.3; B-412940.4; B-412940.5; B-412940.6; B-412940.7; B-412940.8; B-412940.9; B-412940.10; B-412940.11; B-412940.12; B-412940.13; B-412940.14; B-412940.15; B-412940.16; B-412940.17; B-412940.18; B-412940.19; B-412940.23; B-412940.24; B-412940.25

Date: July 13, 2016

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DIGEST

Protests challenging agency's evaluation of proposals and selection decisions are sustained in part and denied in part where record shows that the agency misevaluated price proposals and engaged in misleading discussions.

DECISION

Veterans Evaluation Services, Inc. (VES), of Houston, Texas, protests the award of contracts to VetFed Resources, Inc., of Alexandria, Virginia, and QTC Medical

Services, Inc., of Diamond Bar, California. Logistics Health, Inc. (LHI), of La Crosse, Wisconsin, and Medical Support Los Angeles, a Medical Corporation (MSLA), of Pasadena, California, protest the award of contracts to VES, VetFed and QTC. All of the protests challenge the award of contracts by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA119A-15-R-0150, issued to acquire medical disability examination services. The protesters maintain that the agency misevaluated proposals, engaged in misleading discussions, and made unreasonable source selection decisions.

We sustain the protests in part and deny them in part.

BACKGROUND¹

The RFP contemplates the award, on a best-value basis, of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts to provide medical disability examination (MDE) services on a fixed-price-plus-incentive basis for a base year and four 1-year options at locations throughout the United States, as well as various locations worldwide. RFP at 11-13.² The solicitation identified seven districts, and these protests involve the award of contracts in districts 1 through 5.³ Id. The agency awarded two contracts in each district.⁴ Each contract has a guaranteed minimum value of \$3.7 million and a ceiling value of \$6.8 billion. Id. at 10.

The RFP advised offerors that the agency would evaluate proposals considering price, and several non-price considerations. RFP at 130, 137-138. The evaluation

¹ The agency filed a report responding to the protest of VES, and a second, consolidated report responding to the protests of LHI and MSLA. All citations to the records in this decision identify the document being cited by name, followed by the page or pages being referenced. The agency assigned a numbering system to the records in these cases. All citations are to the numbers assigned by the agency. All citations to the offerors' proposals are to their respective final proposal revisions, unless otherwise noted.

² The agency issued a total of 7 amendments to the RFP. All references to the RFP in this decision are to the conformed version of the solicitation embodied in amendment No. 5, unless otherwise noted.

³ VES's protest challenges the award of contracts in districts 1, 2 and 5. LHI's protest challenges the award of contracts in districts 1 through 4. MSLA's protest challenges the award of contracts in districts 2, 4 and 5.

⁴ The agency awarded contracts to the following concerns: District 1, VetFed and QTC; District 2, VetFed and QTC; District 3, VES and QTC; District 4, VES and QTC; District 5, VetFed and QTC. Business Clearance Memorandum (BCM) at 176-178.

factors were listed in descending order of importance as follows: technical approach, past performance, socioeconomic considerations and price.⁵ RFP at 130. The RFP provided that the non-price considerations, in combination, were significantly more important than price.⁶ Id.

In response to the solicitation, the agency received a number of proposals. The agency evaluated proposals, established a competitive range, engaged in discussions with the offerors and solicited, obtained, and evaluated final proposal revisions (FPRs).⁷ On the basis of its evaluation of FPRs, the agency assigned the following ratings to the proposals:

⁵ The record shows that, in evaluating technical proposals, the agency assigned adjectival ratings of excellent, good, satisfactory, marginal, or unsatisfactory. Technical Consensus Evaluation Report at 41. The agency also assigned proposals strengths, weaknesses, significant weaknesses or deficiencies. Id. In evaluating past performance, the agency assigned adjectival ratings of excellent, good, satisfactory, marginal, unsatisfactory, or neutral/unknown. Past Performance Consensus Evaluation Report at 3.

The RFP also provided that, under the socioeconomic considerations factor, the agency would give proposals full credit, partial credit, or no credit, depending on the status of the entity proposing (whether the concern was a service-disabled, veteran-owned small business or a veteran-owned small business) and/or the status of the offeror's subcontractors, and the percentage of the total requirement that the offeror proposed to subcontract to those concerns. RFP at 137-138.

⁶ VES's protest raises an allegation relating to the agency's application of the evaluation factors and consideration of price in connection with the VA's source selection decisions. We discuss the solicitation's provisions relating to the consideration of price in detail below.

⁷ The record shows that the agency received 12 initial proposals, originally established a competitive range comprised of 5 offerors, and engaged in discussions with those concerns. Subsequently, the agency discovered what it describes as an inconsistency in the terms of the solicitation that resulted in some of the offerors improperly being assigned a weakness or deficiency. The agency therefore reevaluated all 12 proposals, included all of the offerors in the competitive range, and engaged in discussions with all concerns. See VES Contracting Officer's Statement of Facts at 5-9; LHI/MSLA Contracting Officer's Statement of Facts at 5-9.

| Offeror | Technical Approach | Past Performance | Socioeconomic | Price⁸ |
|----------------|---------------------------|-------------------------|----------------------|-----------------------------|
| District 1 | | | | |
| VES | Excellent | Excellent | Partial | \$190,285/ \$190,913,665 |
| LHI | Excellent | Excellent | Partial | \$226,240/ \$191,014,893 |
| MSLA | Excellent | Good | Partial | \$205,700/ \$173,910,228 |
| QTC | Excellent | Good | Partial | \$151,454/ \$127,806,007 |
| VetFed | Excellent | Good | Partial | \$168,785/ \$142,483,232 |
| District 2 | | | | |
| VES | Excellent | Excellent | Partial | \$190,285/ \$160,913,665 |
| LHI | Excellent | Excellent | Partial | \$224,230/ \$189,402,394 |
| MSLA | Excellent | Good | Partial | \$191,600/ \$161,936,916 |
| QTC | Excellent | Good | Partial | \$144,242/ \$121,719,913 |
| VetFed | Good | Good | Partial | \$142,113/ \$119,967,258 |
| District 3 | | | | |
| VES | Excellent | Excellent | Partial | \$190,285/ \$160,913,665 |
| LHI | Excellent | Excellent | Partial | \$238,790/ \$201,698,110 |
| MSLA | N/A | N/A | N/A | N/A |
| QTC | Excellent | Good | Partial | \$144,242/ \$121,719,913 |
| VetFed | N/A | N/A | N/A | N/A |
| District 4 | | | | |
| VES | Excellent | Excellent | Partial | \$188,215/ \$159,155,881 |
| LHI | Excellent | Excellent | Partial | \$230,858/ \$194,999,518 |
| MSLA | Excellent | Good | Partial | \$191,600/ \$161,936,916 |
| QTC | Excellent | Good | Partial | \$144,242/ 121,719,913 |
| VetFed | N/A | N/A | N/A | N/A |

⁸ The record shows that the agency expressed evaluated prices in two ways. First the agency added the unit prices proposed by each firm for all contract line items (CLINs). Second, the agency made a calculation of the estimated total price over the life of the contract. The pricing information in this table includes both figures.

| District 5 | Technical Approach | Past Performance | Socioeconomic | Price |
|------------|--------------------|------------------|---------------|-----------------------------|
| VES | Excellent | Excellent | Partial | \$257,375/ \$213,585,715 |
| LHI | N/A | N/A | N/A | N/A |
| MSLA | Excellent | Good | Partial | \$191,600/ \$161,916,916 |
| QTC | Excellent | Good | Partial | \$151,454/ \$127,806,007 |
| VetFed | Excellent | Good | Partial | \$167,191/ 141,137,270 |

On the basis of these evaluation results, the agency awarded contracts to QTC, VES and VetFed, as described in footnote 4 supra. After being advised of the agency's award decisions and requesting and receiving debriefings, the protesters filed the instant protests.

PROTESTS

All three protests raise a large number of allegations concerning the agency's evaluation of proposals and source selection decisions. In addition, LHI and MSLA argue that the agency engaged in misleading discussions. Except as discussed below concerning the agency's evaluation of VetFed's past performance, we deny the protest of VES, and conclude that the agency's evaluation of proposals largely was unobjectionable.⁹ We deny LHI's and MSLA's non-price evaluation allegations, except as they relate to the evaluation of VetFed's past performance. We sustain LHI's and MSLA's protest allegations relating to the agency's conduct of discussions, as well as those relating to the agency's evaluation of price proposals.¹⁰

⁹ VES made a number of allegations in its initial protest that it subsequently withdrew in its comments. Specifically, VES initially alleged that: The agency improperly failed to evaluate the offerors' pricing for ancillary diagnostic testing under CLIN 0017; the agency engaged in unequal discussions concerning price, and more specifically, in connection with the offerors' proposed rates of professional compensation; the agency improperly failed to find the prices proposed by QTC and VetFed in district 5 unrealistic; and the agency failed to look behind the adjectival ratings assigned to the proposals in making its source selection decisions. VES Comments, May 16, 2016, at 4, n. 2. VES also alleged that QTC has an improper and unmitigated organizational conflict of interest. VES also withdrew this allegation. E-mail to our Office, May 17, 2016.

¹⁰ LHI and MSLA also initially raised allegations concerning the agency's evaluation of the offerors' prices for ancillary diagnostic testing under CLIN 0017; the agency's evaluation of all three awardees' professional compensation rates for realism; and the agency's evaluation of all three awardees' past performance. In its comments
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We have carefully considered all of the protesters' arguments and discuss their principal contentions below, along with illustrative examples. To the extent an allegation is not expressly discussed, it is denied. We discuss the protesters' allegations relating to the agency's technical evaluation of proposals, followed by their allegations concerning the agency's evaluation of the offerors' past performance. Thereafter, we discuss LHI's and MSLA's allegations concerning the agency's evaluation of price, followed by their allegations relating to the agency's conduct of discussions. Finally, we discuss several allegations relating to the propriety of the agency's source selection decisions.

We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate the proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. FP-FAA Seattle, LLC, B-411544, B-411544.2, Aug. 26, 2015, 2015 CPD ¶ 274 at 7. We discuss our conclusions in detail below.

Technical Proposal Evaluation

By way of background, the RFP broadly requires offerors to locate, subcontract with, and train a network of healthcare professionals to perform the MDEs in response to VA requests for examinations in the various districts. RFP at 11, 15-17. In responding to the VA's requests for these examinations, the contractor principally prepares and submits to the agency either a disability benefit questionnaire (DBQ) or a compensation and pension (C&P) examination worksheet. Id. Under the RFP, the successful contractor is required to provide the agency with completed DBQs and/or C&P worksheets within 20 days of when VA requests an MDE. Id.

The contractor also is required to have a secure information technology (IT) infrastructure or system that allows the agency to have real-time access to the status of all outstanding MDE requests; this system also is used to "post" the

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responding to the agency report, LHI and MSLA made no further mention of its allegations concerning the agency's evaluation of prices for ancillary diagnostic testing under CLIN 0017 or the agency's evaluation of the awardees' professional compensation rates for realism. In addition, the protesters in their comments do not provide a substantive response to their allegations concerning the agency's evaluation of VES's past performance. Under the circumstances, we deem these assertions abandoned. Batelco Telecomm. Co. B.S.C., B-412783, et al., May 31, 2016, 2016 CPD ¶ 155 at 4 n.5.

completed DBQs and C&P worksheets so as to make them available to the agency. RFP at 16.

VES's Challenge to the Agency's Technical Evaluation

The record shows that QTC and VetFed are incumbent contractors performing MDE services. QTC and VetFed had a mentor-protégé arrangement under which QTC was VetFed's mentor. VES Contracting Officer's Statement of Facts at 25-26. VES alleges that, under its predecessor contract, QTC was unable to meet the timeliness requirement of that contract, which required QTC to complete MDEs within 38 days of the request for an examination. VES maintains that the agency should have considered the timeliness of QTC's performance under its predecessor contract in evaluating QTC's technical proposals, and also should have imputed QTC's performance to VetFed because those two concerns will be acting in partnership to perform the current contracts awarded in districts 1 and 5.

We find no merit to this aspect of VES's protest. As correctly noted by the agency, the RFP provided for a separate evaluation of the offerors' past performance under the past performance evaluation factor. RFP at 137. In evaluating the offerors' technical proposals, the record shows that the agency properly confined its evaluation to the firms' proposed technical solutions to meeting the RFP's timeliness requirements. For example, in evaluating QTC, the agency concluded that its proposal reflected a clear understanding of the 20-day timeliness requirement, and included strategies that would foster its ability to meet that requirement such as [deleted], and [deleted]. BCM at 20.

In evaluating VetFed, the agency noted that it proposed an innovative strategy for meeting the 20-day timeliness requirement that [deleted]. BCM at 27 (strengths 4 and 6). In addition, for districts 1 and 5 (where VetFed will be subcontracting with QTC for its IT infrastructure requirements), the agency also identified elements of VetFed's IT infrastructure that enable users to track the status of examination requests that provide for greater probability of meeting the timeliness requirement. Id. (strength 4).

In sum, the record reflects that the agency properly did not consider the offerors' past performance in evaluating their respective technical approaches. Inasmuch as VES does not take issue with the agency's substantive findings relating to the relative merits of QTC's and VetFed's technical approaches, we have no basis to object to the agency's evaluation of their proposals under the technical evaluation factor for the reasons advanced by VES.¹¹

¹¹ The record does show that the agency identified a weakness in the VetFed technical proposal in district 2 relating to the firm's ability to meet the RFP's requirement for Section 508 compliance. BCM at 28. (Section 508 refers to the

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VES also alleges that the agency failed to distinguish between it and VetFed in district 2, based on the fact that VES has what the agency characterized as a “robust” provider network, whereas VetFed does not have an existing trained and certified network of providers in district 2. VES maintains that VetFed proposed to use a subcontractor to provide its network of providers, but that the subcontractor has no experience in providing MDE contracting, and it will take time to recruit, train and certify a network of providers.

We find no merit to this aspect of VES’s protest. As the agency correctly notes, the RFP contemplates a 90-day start-up period, and during that time, VetFed will have an opportunity to recruit, train and certify its network of providers.¹² The record also shows that VES received full credit for its provider network. In evaluating the VES proposal, the agency specifically noted as a strength the robust nature of its provider network, and specifically identified this aspect of the VES proposal (along with the firm’s IT infrastructure) as contributing to the firm’s ability to ramp up in less than 90 days. BCM at 24. Ultimately, the agency assigned the VES proposal a rating of excellent under the technical evaluation factor, while assigning the VetFed proposal only a good rating under the same factor for district 2. *Id.* at 25, 28. The record therefore shows that the agency did distinguish between the VetFed and VES proposals in this area, and the protester’s objections regarding this aspect of the agency’s evaluation amount to no more than disagreement with the agency’s evaluation findings. Such disagreement, without more, does not provide our Office

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Rehabilitation Act of 1973, as amended, which generally requires that an agency’s information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.) VES correctly notes that the agency considered VetFed’s past performance in finding that this weakness in its technical proposal was not considered significant. BCM at 128. We agree with VES that the agency improperly considered VetFed’s past performance as an ameliorating factor that reduced the significance of the weakness identified in its technical proposal. See PricewaterhouseCoopers LLP, B-409537, B-409527.2, June 4, 2014, 2014 CPD ¶ 255 at 11-12. The focus of the agency’s technical evaluation properly should have been confined to the approach proposed, and not on whether VetFed has performed well in the past.

¹² VES itself points out that it can take anywhere from 6 to 8 weeks to get a newly-identified provider credentialed, trained and certified to perform MDEs. Protester’s Comments at 31. Thus, even by the protester’s estimates, getting providers ready to perform MDEs can be accomplished within the 90-day start-up period.

with a basis to object to the agency's evaluation findings. N-Link/LSG Joint Venture, B-411352, B-411352.2, July 1, 2015, 2015 CPD ¶ 194 at 9.¹³

VES also argues that the agency evaluated proposals unequally. According to VES, the agency improperly assigned strengths to the QTC and VetFed proposals that also should have been assigned to its proposal. VES identifies six strengths for which it claims it was not given credit (but for which either QTC, VetFed, or both, were given credit), even though those same features allegedly were also included in VES's proposal.

We find no merit to this aspect of VES's protest. We have carefully examined each of VES's claims regarding the assignment of strengths and find that the agency reasonably assigned the strengths in question to the QTC and/or VetFed proposals while not also assigning the VES proposal a strength for a feature that it believes was similar and merited the assignment of a strength. We discuss one example for illustrative purposes.

The record shows that the agency assigned the QTC and VetFed proposals a strength for providing superior section 508 compliance.¹⁴ The basis for assigning this strength was the firms' use of a [deleted] that [deleted] for section 508 compliance, and [deleted] in connection with ensuring section 508 compliance. BCM at 20-21, 27. In comparison, the record shows that, while VES proposed to ensure compliance with section 508, it did not provide [deleted] comparable to the [deleted] proposed by QTC and VetFed. See VES Technical Proposal at 8. On this record, we have no basis to question the agency's assignment of strengths to the QTC and VetFed proposals--but not to the VES proposal--in the areas identified by the protester.

Finally, VES argues that the agency improperly failed to take into consideration a pending transaction relating to QTC. The record shows that QTC is a subsidiary of Lockheed Martin, and that the QTC proposal makes reference to reliance on

¹³ As a final matter on this issue, VES argues that the agency's evaluation materials do not affirmatively discuss the adequacy of VetFed's provider network in district 2. The record shows that, in evaluating proposals, the agency uniformly identified strengths and weaknesses in each offeror's proposal but did not affirmatively or exhaustively discuss every aspect of the offerors' technical approaches that were not assigned a strength or weakness. On this record, we have no basis to object to the agency's evaluation of VetFed's provider network in district 2.

¹⁴ The strength was assigned to the VetFed proposal, but only in districts 1 and 5 where QTC is its IT infrastructure subcontractor. BCM at 27. As noted, VetFed was assigned a weakness for its section 508 compliance in district 2 where it is not using QTC as its IT infrastructure subcontractor. BCM at 28.

Lockheed to provide, for example, [deleted]. QTC Technical Proposal at 10 (district 1), 59 (district 2), 206 (district 5). VES maintains that Lockheed intends to sell QTC to another concern, Leidos, and that when this occurs, QTC will no longer have the Lockheed resources that its proposal relies on. QTC maintains that the agency's evaluation failed to take this pending sale into account in evaluating the QTC proposal.

We have no basis to object to the agency's evaluation for this reason. The record shows that Lockheed Martin and Leidos have entered into an agreement for the sale of Lockheed's Information Systems and Global Solutions business segment at some point in the future. See VES's Comments, exhs. I (Lockheed Martin Press Release) and J (a Reuters News Story). The transaction in question has not yet occurred, and in fact, may never occur. In addition, there is no definitive information in the record regarding precisely what elements of Lockheed Martin Company are, or will be, included in the transaction, and whether the corporate capabilities of QTC will be affected by the transaction.¹⁵ Simply stated, there is no basis to object to the agency's evaluation of the QTC proposal for failing to take into consideration a transaction that has not occurred, and that may not have any effect on QTC's ability to perform. (In this latter regard, the agency points out as well that QTC has been performing MDE examinations for the agency since prior to 2011, which is when Lockheed acquired QTC.) We therefore deny this aspect of VES's protest.

¹⁵ For example, VES also originally alleged that this sale should have affected the agency's evaluation of QTC because QTC also would not have the resources of another Lockheed entity, Systems Made Simple, with which it proposed to perform the requirement. VES withdrew this aspect of its protest because, it states, it has since learned that Systems Made Simple will be included in the proposed transaction with Leidos.

LHI's Challenge to the Agency's Technical Evaluation¹⁶

LHI maintains that the agency unreasonably evaluated the comparative strength of its proposed provider network compared to the networks proposed by QTC and VetFed. Essentially LHI maintains that its provider network--which it claims includes some [deleted] providers--is materially better than the networks proposed by QTC and VetFed. LHI therefore maintains that it was unreasonable for the agency to have assigned all three concerns strengths for their respective provider networks.

We find no merit to this aspect of LHI's protest. Central to this aspect of LHI's protest is its contention that it has a larger network of providers under contract compared to QTC and VetFed. However, as discussed above, the RFP did not require offerors to have a preexisting network of providers in place at the time of contract award. Instead, the RFP provides for a 90-day ramp-up, during which time the awardees can subcontract with, train, and certify providers.

In any event, the record shows that the offerors identified the number of providers already under contract in the various protested districts, and the record shows that QTC identified a [deleted] number of providers already under contract compared to LHI. The record shows that, in districts 1-4, QTC's proposal states that it maintains a national network of providers and represents that it has, respectively: [deleted] providers in district 1 (QTC Technical Proposal at 24); [deleted] providers in district 2 (QTC Technical Proposal at 73); [deleted] providers in district 3 (QTC Technical

¹⁶ Counsel for LHI and MSLA filed separate initial and supplemental protests for each concern. MSLA's initial and supplemental protests challenged the agency's evaluation of the adequacy of all three awardees' proposed networks, claiming that they were inadequate to meet demand under the awarded contracts as demonstrated by their alleged inability to perform their respective incumbent contracts. In submitting comments responding to the agency report, counsel for LHI and MSLA filed a consolidated submission covering both firms' protests. In that submission, counsel focused on the agency's evaluation of the LHI provider network as compared, principally, to the QTC and VetFed networks. There is no mention of MSLA's challenge to the agency's evaluation of the awardees' proposed networks. Under these circumstances, we find that MSLA has abandoned this aspect of its protest. Batelco Telecomm. Co. B.S.C., supra.

In addition, although the original LHI protest squarely challenged the agency's evaluation of the VES provider network, the comments responding to the agency report make only a passing reference to the number of providers identified in the VES proposal. LHI/MSLA Comments at 31. There is no substantive argument relating to the alleged inadequacy of the VES network. Under the circumstances, we find that LHI has abandoned its challenge to the agency's evaluation of the adequacy of the VES network. Batelco Telecomm. Co. B.S.C., supra.

Proposal at 122); and [deleted] providers in district 4 (QTC Technical Proposal at 171).¹⁷ In comparison, LHI's proposal also claims to have a national network of providers, and that it has, respectively: [deleted] trained and credentialed providers in district 1 (LHI Technical Proposal at 10); [deleted] providers in district 2 (LHI Technical Proposal at 57); [deleted] providers in district 3 (LHI Technical Proposal at 105); and [deleted] providers in district 4 (LHI Technical Proposal at 154). The record therefore shows that QTC's proposal (and, by extension VetFed's proposal) identified a larger network of providers under contract than was identified in the LHI proposal.

As a final matter, the VetFed proposal for district 2 does not identify QTC as a subcontractor for purposes of establishing its network of providers, although it does represent that it intends to use a network of [deleted] providers in district 2 (VetFed Technical Proposal at 73), a larger number of providers than proposed by LHI in district 2 ([deleted] providers in district 2). The record shows that, for district 2, the agency recognized the comparative differences in the offerors' provider networks; VetFed was not assigned a strength for its provider network and received a lower rating compared to LHI under the technical approach evaluation factor (good versus excellent). BCM at 27-28. In light of these considerations, we deny this aspect of LHI's protest.

Past Performance Evaluation

All three protesters challenge the agency's evaluation of past performance for various reasons. We have carefully reviewed all of the past performance allegations and find them largely to amount to disagreement with the agency's assignment of adjectival ratings; such disagreement, without more, does not provide a basis for our Office to object to the agency's past performance evaluation. N-Link/LSG Joint Venture, supra.¹⁸ All three protesters raise an allegation

¹⁷ Although LHI also maintains that VetFed's provider network in district 1 is not comparable to its provider network in that district, it is evident from the VetFed proposal that the firm will be utilizing the QTC network under subcontract. The VetFed proposal identifies QTC as its major subcontractor (VetFed Technical Proposal at 4), represents that it has [deleted] providers available in district 1, and also states that it intends to augment the QTC network for district 1 with additional providers from VetFed's other subcontractors, IWA and Juncture (id. at 23).

¹⁸ LHI and MSLA also allege that the agency improperly failed to review contractor performance assessment reports (CPARs) in connection with its evaluation of past performance. However, the record shows that the agency treated all of the offerors the same and confined its review to the past performance materials included in the offerors' proposals, along with past performance questionnaires (PPQs) prepared by the cognizant reviewing official for the contracts reviewed. See generally, Past Performance Consensus Evaluation Report; BCM at 28-55. The sole exception to
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concerning the evaluation of VetFed's past performance that we conclude is meritorious.

The record shows that VetFed included three past performance examples, but the agency only found one of them to be relevant, specifically, the MDE contract it performed as a protégé to QTC. VetFed Past Performance Proposal.¹⁹ The record shows that the agency reviewed this contract and assigned VetFed a good rating for past performance based on that review.

The protesters allege that, in district 2, the agency unreasonably used VetFed's good rating in evaluating its proposal and making its selection decision. BCM at 119-134. The basis for the protesters' objection is the fact that, in district 2, VetFed will not be using QTC as its major subcontractor. The VetFed proposal shows that, in districts 1 and 5, QTC is acting as VetFed's primary subcontractor, and is making available both its provider network and its IT infrastructure to VetFed in those districts. VetFed Technical Proposal at 4, 23 (district 1) and 104, 123 (district 5). However, in district 2, VetFed is not using QTC as a subcontractor. VetFed Technical Proposal, district 2. The protesters reason that, since VetFed's good past performance rating is premised on its performance of the predecessor MDE contract as QTC's protégé using QTC's resources, and since QTC is not acting as VetFed's major subcontractor in district 2, it was unreasonable for the agency to have credited VetFed with performance of the predecessor MDE contract in evaluating its past performance in district 2.

The agency responds that the RFP did not require offerors to provide geographically specific past performance examples and that it was reasonable for it to have credited VetFed with performance of the predecessor MDE contract in district 2.

We sustain this aspect of the protests. An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate

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this was in the case of MSLA, where the PPQ submitted for its referenced contract advised the agency to see the CPAR for that contract. MSLA Past Performance Proposal, Past Performance Questionnaire at 3; BCM at 42. While the RFP allowed the agency discretion to review other sources of past performance information, it did not require the agency to review any particular materials. RFP at 137. Under the circumstances, we have no basis to object to the agency's past performance evaluation for failing to review the offerors' CPARs.

¹⁹ See BCM at 54-55 (VetFed's second reference "bears little resemblance to the requirements in the RFP" VetFed's third reference "is of little relevance . . .").

will affect the performance of the offeror. IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2 et al., July 10, 2013, 2013 CPD ¶ 171 at 8-9; Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. Alutiq Pacific LLC, B-409584, B-409584.2, June 18, 2014, 2014 CPD ¶ 196 at 4. While it is appropriate to consider an affiliate's performance record where the affiliate will be involved in the contract effort, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. Id.²⁰

Here, as noted, the record shows that VetFed's relevant past performance example is a contract it performed in close cooperation with QTC; the firms performed using a mentor-protégé arrangement, and there is no dispute that QTC's provider network and IT infrastructure played a material part in VetFed's successful performance of the predecessor contract. The record also shows that QTC is acting as VetFed's primary subcontractor in districts 1 and 5, but not in district 2. While the RFP did not require offerors to provide geographically specific past performance examples, the examples provided necessarily should have been scrutinized to determine whether or not the resources used on the predecessor contract--in this case QTC's provider network and IT infrastructure--would be used in performing the solicited requirement. Since the record here does not show that the agency gave consideration to this question, we conclude that its assignment of a good rating to VetFed for its past performance in district 2 was unreasonable. We therefore sustain this aspect of the protests.

Price Evaluation

The RFP required offerors to complete two spreadsheets in submitting their proposed pricing. The first, attachment L to the RFP, included some 20 principal CLINs, each of which represented a particular type of examination procedure or other requirement (such as performance of a record review of a medical file). RFP, Amendment 003, at 2109-2283. CLIN 0001, which required pricing for general medical examinations, also included numerous subCLINs requiring prices for graduated quantities of exams. Other CLINs included subCLINs reflecting differing types of a broader requirement (for example, CLIN 0002 generically required prices for musculoskeletal system examinations and required prices for 15 types of

²⁰ While the cases cited above discuss parent companies and affiliated organizations, we think the underlying principle applies with equal force here, where QTC is VetFed's former mentor and current subcontractor in some--but not all--of the districts where VetFed proposed.

specific examinations). CLIN 0017 required offerors to provide pricing for ancillary diagnostic tests such as x-rays and laboratory tests.

For all of the CLINs except CLIN 0017, offerors were required to provide a unit price for each type of exam. For CLIN 0017, offerors were required to provide prices expressed as a percentage of the national Medicare baseline of reimbursement for the test to be performed. (For example, if an offeror proposed 100 percent of the national Medicare baseline, and the rate of reimbursement for the test in question was \$100, then the offeror's price for that test would be \$100.) Offerors were required to provide unit prices for the base year and each option year for each district in which the concern was proposing.

The second spreadsheet, attachment M, required offerors to provide minimum and average hourly rates for direct compensation and minimum and average hourly fringe rates for a list of different types of physicians for the base year and each option year. RFP, amendment No. 003, at 2285-2305.

In addition to these spreadsheets, the RFP included another spreadsheet, attachment N, that provided information about the minimum and maximum estimated quantities of MDE requests that the agency anticipated would be performed throughout the contract period. RFP, amendment No. 3, at 2307-2310. For example, this spreadsheet showed that, for district 1, the agency estimated a minimum quantity of 313,825 MDE requests and a maximum estimated quantity of 1,282,617 MDE requests over the life of the contract. Id.

The record shows that, in evaluating prices, the agency performed two calculations. First the agency added the CLIN unit prices together for the base and each option year for each firm in each district. BCM at 62. As noted in the table above summarizing the agency's evaluation results, this produced an expression of "price" in the hundreds of thousands of dollars (for example, LHI's "price" for district 1 was calculated as \$226,240).

Second, the agency averaged the unit prices for each offeror in each district to arrive at an "average" CLIN price. The agency next calculated an "average" number of MDE requests for each district derived from the minimum and maximum estimated quantities of examination requests specified in attachment N. Finally, the agency multiplied each offeror's "average" CLIN price by the average number of examination requests in each district to arrive at an estimated price for each offeror in each district over the life of the contract. BCM at 63. (For those districts where the agency anticipated awarding two contracts this figure was divided in half.) These calculations produced an expression of "price" in the hundreds of millions of dollars (for example, LHI's "price" for district 1 was calculated as being \$191,014,893). Id.

LHI and MSLA argue that the agency's calculations fail to reflect the likely total price to the government for each proposal because those calculations do not reflect the estimated quantities of each line item that may be ordered. According to the protesters this violates the fundamental statutory requirement that agencies consider the cost or price to the government in awarding every contract. 41 U.S.C. § 3306 (c)(1)(B). The protesters maintain that, because the agency's calculations do not accurately reflect what the estimated total price of each proposal is, its best-value selection decisions are essentially meaningless.

Preliminarily, the agency and intervenors argue that this aspect of LHI's and MSLA's protests is an untimely challenge to the terms of the RFP. According to the agency and intervenors, offerors were on notice that the agency would not use estimated quantities of each type of exam to evaluate total price because it did not include that information in the solicitation and advised offerors that the information was not available to them at the time the solicitation was issued. In addition, the agency and intervenors note that the RFP advised offerors that the agency would use only the summed CLIN prices to evaluate price. The instructions to offerors provided as follow:

In the Schedule of Prices the Offeror shall insert the unit price for the services proposed and verify that the price template has correctly calculated the total price for each line item and the total proposed price for the District (sum of proposed prices for each examination line item). The Government shall use the total proposed price for each District (Total for base and all option periods) to determine price reasonableness.

RFP at 136.

As a general matter, protests challenging the terms of a solicitation, to be timely, must be filed prior to the deadline for submitting proposals. 4 C.F.R. § 21.2(a)(1). Here, a review of the RFP demonstrates that it did not state how the agency would calculate or evaluate total price. The language identified by the agency and the intervenors--quoted above--describes how the agency would calculate "total price" for purposes of price reasonableness, but it is silent on the question of how the agency would calculate total price for source selection purposes.²¹ While the RFP's

²¹ We point out as well that the language does not appear in the RFP's evaluation criteria, but, rather, in the proposal preparation instructions to offerors. Agencies are required to evaluate proposals based on the evaluation factors stated in the solicitation; while a solicitation may establish additional informational, technical, administrative, or other requirements, those requirements properly may not be considered in connection with the evaluation of proposals, unless those additional
(continued...)

price evaluation factor provides information regarding how the agency would calculate the CLIN 0017 prices (the prices based on the percentage of national Medicare baseline rates of reimbursement), it is silent on the question of how the agency would calculate total evaluated price for the remaining CLINs. The RFP provides as follows:

The Offeror's proposed percentages will be multiplied by the estimated quantities and VA provided sample unit price to determine a total proposed price for each Procedures, Tests, Laboratory Work, and X-rays line item [CLIN 0017]. These line items will then be added to the total proposed prices for all remaining line items to generate an overall total proposed price (including base and all option periods) for each Offeror.

RFP at 138 (emphasis supplied). Thus, there was no basis for the protesters to have concluded from the terms of the RFP that the agency would calculate total evaluated price without reference to the estimated quantities of each line item. Under the circumstances, we find this aspect of LHI's and MSLA's protest timely.²²

With regard to the merits of this allegation, the agency essentially argues that it does not have adequate information to estimate the quantities of each CLIN and, therefore, it was reasonable for it to rely principally on a comparison of unit prices. The agency also argues that its extended calculations of price provided a reasonable basis to determine the total price for each proposal, and also confirmed the results of its other calculation.

We agree with the protesters that the agency's evaluation of total prices here was unreasonable. Agencies are required by statute to consider the cost or price to the government of entering into a contract. 41 U.S.C. § 3306(c)(1)(B). In the context of IDIQ contracting, this often is difficult because of uncertainty regarding what

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requirements also are specified as a basis for proposal evaluation. Metis Solutions, LLC, et al., B-411173.2 et al., July 20, 2015, 2015 CPD ¶ 221 at 5 n.6.

²² As a final matter, we point out that, even if we concluded that the RFP put offerors on notice of how the agency would calculate total price--according to the agency and intervenors, the calculation would involve simply adding together the offerors' CLIN unit prices--LHI's and MSLA's protest challenging the agency alternative method of calculating total proposed price still would be timely. The protesters only learned of the agency's attempt to calculate total prices by averaging unit prices and multiplying that number by an average number of examination requests when they received the agency report. See Preferred Systems Solutions, Inc., B-292322, et al., Aug. 25, 2003, 2003 CPD ¶ 166 at 9.

ultimately will be procured. Agencies have developed a variety of methods or strategies to address this difficulty, including the use of estimates for the various quantities of labor categories or units to be purchased under the contract, see Creative Info. Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 3; the use of sample tasks, FC Bus. Sys., Inc., B-278730, Mar. 6, 1998, 98-2 CPD ¶ 9 at 3-5; hypothetical or notional plans that are representative of what requirements are anticipated during contract performance, Aalco Forwarding, Inc., et al., B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 at 11; and hypothetical pricing scenarios reflecting various cost or price eventualities. PWC Logistics Servs., Inc., B-299820, B-299820.3, Aug. 14, 2007, 2007 CPD ¶ 162 at 11-15. Underlying each of these methods is the central objective of evaluating the relative total cost or price of competing proposals in order to provide the agency's source selection authority a meaningful understanding of the cost or price implications of making award to one or another concern. It is axiomatic that the agency's price evaluation method must produce results that are not misleading. Aalco Forwarding, Inc., supra. at 11.

Here, the agency's price evaluation provides no insight to the agency regarding the likely cost or price of awarding a contract to one versus another of the offerors. The agency's first method for evaluating prices--adding up each proposed CLIN unit price--fails to account for variations in the quantities that may be ordered under each CLIN. The record shows that there were widely varying prices among the offerors for each CLIN, and without reference to an estimate of the quantities to be ordered, there is no basis, using this calculation, to reach any conclusion about relative cost or price of each proposal, or the ranking of the proposals on the basis of price.²³

The agency's second method for evaluating prices--establishing an "average" CLIN price for each offeror and then multiplying that number by the average number of MDE requests--also provides no basis to reach any conclusions about the relative cost or price of each proposal, or the ranking of the proposals on the basis of price. This calculation merely provides a "scaled up" version of the other calculation by multiplying the averaged CLIN prices by the average number of MDE requests.²⁴

²³ For example, in district 1, unit prices for CLIN 001AA--the unit price per examination for a general medical examination where the quantity ordered is from 1 to 5 examinations varied from a low price of [deleted] to a high price of [deleted] for the base year of the contract. Agency Price Evaluation Spreadsheet, District 1. Similarly, the unit prices for CLIN 003A--the unit price for an eye examination--varied from [deleted] to [deleted] in the base year. Id.

²⁴ Mathematically speaking, whether the individual CLIN prices are simply added up for each offeror, or added up and averaged, the relative ranking of the offerors will remain the same. It is therefore not surprising that the agency's second calculation "confirmed" its first calculation.

We also are not persuaded by the agency's assertion that it does not have sufficient information relating to the quantities that may be ordered under each CLIN. (The contracting officer specifically represents that the agency does not have any historical data on this question. Contracting Officer Statement of Facts at 12.) However, as the protesters--incumbent contractors for the MDE requirement--point out, they (and presumably all of the VA's other incumbent contractors) provide the agency with a monthly report that details the number of examinations, by examination type, that were provided during the preceding month. It therefore appears that the agency does, in fact, have the historical data necessary to prepare estimates of the quantities for the CLINs being solicited.²⁵

In sum, agencies are required to evaluate price in a manner that provides reasonably accurate information concerning the relative total cost or price of competing proposals so that the agency's source selection authority has a meaningful understanding of the cost or price implications of making award to one or another concern. Aalco Forwarding, Inc., *supra*, at 11. The agency's price evaluation here did not provide the required information. In light of the foregoing considerations, we sustain this aspect of LHI's and MSLA's protests.²⁶

Misleading Discussions

LHI and MSLA argue that the agency engaged in misleading discussions in the area of price. The record shows that, after the submission of initial proposals, the agency advised both protesters that their proposed prices for all CLINs were determined to be fair and reasonable. Revised Evaluation Summary--Pre Discussions for LHI at 10; Revised Evaluation Summary--Pre Discussions for MSLA

²⁵ Even if, as the agency claims, it does not have this historical information, the agency still is required to develop a reasonable methodology for assessing the cost or price to the government of competing proposals. 41 U.S.C. § 3306(c)(1)(B). As discussed, the agency's evaluation here does not fulfill this statutory requirement.

²⁶ As a final matter, we point out that the RFP required the agency to evaluate prices for balance. RFP at 138. The record shows that the agency engaged in a price balancing evaluation by comparing prices during each year of the contracts to determine whether or not prices were balanced across all years of contract performance. BCM at 65. However, the agency made no attempt to evaluate prices for balance between CLINs. The agency's price evaluation also suffers from failing to perform this required analysis because, without knowing the quantities for each CLIN, there is no way for the agency to determine whether prices are balanced as between CLINs. See Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 15.

at 9.²⁷ In preparing their respective FPRs, LHI lowered its prices in all four districts in which it had proposed, while MSLA left its prices unchanged. In the agency's reevaluation, however, both firms were found to have proposed unreasonably high prices for certain CLINs. BCM at 72-73, 96-97. Both offerors maintain that the agency misled them during discussions into believing that their proposed prices were fair and reasonable when, in fact, the agency ultimately determined their prices to be unreasonably high.

The agency argues that it did not mislead the protesters during discussions. The agency states that their prices were determined fair and reasonable during the initial evaluation and that the agency therefore appropriately advised the offerors of that conclusion. The agency states that it was only during its evaluation of FPRs that it determined that their proposed prices were unreasonably high.

The agency explains that it evaluated prices for reasonableness using the following evaluation method. For each CLIN and subCLIN, the agency took the prices submitted by all of the offerors and calculated an average price. The agency then measured one standard deviation up from those average prices and established what it refers to as price "benchmarks" for each CLIN. In evaluating the proposals for reasonableness, the agency explains that it identified prices falling above the benchmark prices as unreasonably high.

The agency goes on to explain that when it evaluated LHI's and MSLA's initial prices, all of their respective CLIN prices were determined reasonable because all of them fell below the benchmark prices. The agency states that, after it received FPRs, it recalculated the benchmark prices using the pricing information included in the FPRs; according to the agency, the benchmark prices went down because the FPR prices were lower than the initial prices. Accordingly, prices that previously had been identified as fair and reasonable were found unreasonably high upon reevaluation. The agency argues that, since LHI's and MSLA's prices were first determined unreasonable after submission of their FPRs, it was under no obligation to discuss the matter with them.

We sustain this aspect of the protests.²⁸ The Federal Acquisition Regulation (FAR) requires that, where an agency undertakes discussions with offerors, the

²⁷ Each offeror was provided with a written evaluation summary after initial proposals were submitted and evaluated.

²⁸ The agency also alleges that this issue is untimely because it advised LHI and MSLA during discussions that it intended to recalculate the benchmark prices. However, the discussions were conducted orally and there is no contemporaneous evidence of what was said at that time. LHI and MSLA employees that participated in the discussions have submitted affidavits in which they represent that they were not advised that the agency would recalculate the benchmark prices, while the

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contracting officer shall discuss with each firm being considered for award deficiencies and significant weaknesses identified in the firm's proposal. FAR § 15.306(d)(3). Although an agency has no duty to reopen discussions to allow an offeror to address proposal defects or significant weaknesses first introduced in the offeror's post-discussion proposal revision, Honeywell Tech. Solutions, Inc., B-400771; B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 10, where an agency identifies a concern pertaining to the proposal as it was prior to discussions that would have had to be raised if it had been identified before discussions, the agency is required to reopen discussions. CIGNA Gov't Servs., LLC, B-401062.2, B-401062.3, May 9, 2009, 2010 CPD ¶ 283 at 7.

Here, there is no question that both protester's FPRs were either identical in, or lower in, price compared to their initial proposals; the proposals remained unchanged from initial to final proposals, except that LHI's pricing went down in its FPR. It follows that neither concern introduced a proposal change in their respective FPRs that first gave rise to the finding that their prices were not fair and reasonable. Instead, the agency essentially changed the evaluation criterion it used to measure price reasonableness. In effect, therefore, the agency discovered a weakness in each firm's proposal that existed in the initial proposal, but was not identified until evaluation of FPRs. Accordingly, the agency was required to reopen discussions once it made this finding. CIGNA Gov't Servs., LLC, supra. We therefore sustain this aspect of LHI's and MSLA's protests.²⁹

Source Selection

As a final matter, we briefly discuss two considerations relating to the agency's source selection decisions. First, VES raises a challenge to the agency's award decisions based on certain solicitation language. The RFP included two statements relating to how the agency would treat price in relation to the other, non-price factors. First, in stating the basis for award, the RFP provided as follows:

This will be a best-value award. This is not a lowest-cost, technically acceptable competition. The following factors, listed in descending order of importance, will be used to evaluate offers: Technical

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agency has not submitted any evidence in support of its position beyond the contracting officer's unsworn statement. Given the lack of any contemporaneous evidence, we resolve doubt concerning the timeliness of this allegation in favor of the protester. Harris IT Servs. Corp., B-406067, Jan 27, 2012, 2012 CPD ¶ 57 at 5.

²⁹ The agency may wish to reconsider using all 12 offerors' prices to establish the agency's benchmark prices. Calculating an average that includes unreasonably high prices could result in a skewed benchmark.

Approach, Past Performance, Socioeconomic Considerations, and Price. The lowest price will not normally be the deciding factor; however, the closer proposals are rated in non-price factors, the more importance price will assume.

RFP at 130. In the price evaluation factor the RFP included the following additional statement:

As stated supra, this is not a lowest-cost, technically acceptable acquisition. Lowest price shall not be the primary or determining award factor, but if the VA determines that two or more Offerors are ranked approximately equal, VA retains the right and discretion to use price to determine award status.

RFP at 138. VES essentially argues that this second clause precluded the agency from making award to a lower-priced offeror unless the agency determined that the lower-priced proposal was approximately equal to a higher-priced proposal under the non-price factors. The agency, for its part, takes the position that it retained the discretion to make price/technical tradeoffs.

We find no merit to this allegation. When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5.

The protester's interpretation of the second provision above essentially would require the agency to make award to a technically superior proposal without regard to the price premium associated with such an award. Such an interpretation is unreasonable, however, in light of the language of the first provision quoted above. See PTSI Managed Servs., Inc., B-411412, July 20, 2015, 2015 CPD ¶ 236 at 12-13 (protester's interpretation not reasonable where it would lead to an absurd result). Under the terms of that provision, the agency clearly stated that it would use what amounts to a sliding scale, with the importance of price increasing as proposals were found closer in merit under the non-price factors. Accordingly, we conclude that the agency reserved to itself the discretion to make price/technical tradeoffs; simply stated, proposals did not have to be found technically equal in order for the agency to take advantage of a lower-priced proposal. We therefore deny this aspect of VES's protest.

Second, all three protesters argue that it was improper to make awards to QTC and VetFed in districts 1 and 5. The RFP stated that the agency intended to award two contracts in districts 1 through 6. RFP at 129. The RFP further provided that the work would be divided among the two successful contractors in each district, with each firm receiving 35 percent of the total MDE requests, and with the remaining 30 percent of the requests being issued to one or the other contractor based on the

quality of the contractors' performance and capacity, which, under the terms of the RFP, is to be monitored continuously. RFP at 35.

The protesters argue that, as a practical matter, VetFed is dependent upon QTC's resources in districts 1 and 5 (principally QTC's provider network and IT infrastructure). Accordingly they maintain that award to these two concerns violated the terms of the RFP.

We find no merit to this aspect of the protests. Although the protesters may be correct that VetFed is heavily reliant on the resources of QTC, both firms are separate entities, and VetFed's use of QTC's resources is obtained through a subcontract entered into by the two firms. Thus, the agency's awards to VetFed and QTC in districts 1 and 5 are unobjectionable under the terms of the RFP because, as a legal matter, the agency has made award to two separate companies, and their respective performance will be monitored throughout the life of the contract to ensure that the better-performing firm receives the additional work.

As a practical matter, although the protesters may be correct that the VA may not obtain the enhanced capacity that would be occasioned by award to two concerns that do not have a subcontracting relationship, there is no legal basis to object to the agency's award decisions for the reasons advanced by the protesters.

RECOMMENDATION

We recommend that the agency reopen its acquisition for districts 1 through 5 and engage in adequate discussions with all offerors. The agency then should solicit, obtain and evaluate revised proposals in a manner consistent with the discussion above. We further recommend that the agency make new source selection decisions in the protested districts. Should the agency select a different firm for one or another of the awards, we recommend that the agency terminate the contract(s) awarded for the convenience of the government, and make award to the newly selected firm(s), if otherwise proper. In addition, we recommend that the protesters be reimbursed the costs of filing and pursuing their respective protests, including reasonable attorneys' fees. The protesters should submit their certified claims for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained in part and denied in part.

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