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Decision

Matter of: TCG Consulting, Inc.--Costs

File: B-415521.5

Date: July 17, 2020

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Major Sean B. Zehtab, Esq., Department of the Army, for the agency.
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DIGEST

Protester's request that our Office recommend it be reimbursed the costs of filing and pursuing its protest and supplemental protest is denied where the protest grounds were not clearly meritorious.

DECISION

TCG Consulting, Inc., an 8(a) small business of Atlanta, Georgia, requests that our Office recommend that it be reimbursed the reasonable costs associated with filing and pursuing its protests against the issuance of an order to Red Carrot, Inc., of Miami, Florida, pursuant to solicitation No. W9133L-17-R-0042, issued by the Department of Defense, National Guard Bureau (NGB) to provide an action events program.

We deny the request.

The NGB issued the solicitation on June 1, 2017, via the General Services Administration's (GSA) e-Buy portal, as a set-aside for companies participating in the Small Business Administration's 8(a) Small Disadvantaged Business Program to vendors holding Federal Supply Schedule (FSS) contracts under GSA Schedules 541 1 (advertising services) and 541 5 (integrated marketing services). Agency Report (AR), (B-415521.3), Tab 9, Solicitation at 1, 31.¹ The solicitation sought a contractor to

¹ The underlying documents cited in this decision were provided by the agency in connection with B-415521.3. The references to the solicitation are to the conformed copy provided by the agency.

provide a minimum of 500 event-based marketing activities at high schools, colleges, and community events in order to generate leads from the audience for Army National Guard recruiting purposes. *Id.* at 5-6. The events were to be “athletic in nature, using active, extreme, and/or adrenaline-pumping demonstrations,” and were required to generate no less than 50,000 recruitment leads. *Id.* at 6, 16. The solicitation required coordination between the offeror and that state’s National Guard marketing non-commissioned officers (NCOs) for a particular school within two business days following the scheduling of an event at the school. Solicitation Performance Work Statement (PWS) 5.16 at 19.

The solicitation contemplated the issuance of a 1-year, fixed-price order, with a 1-year option period. *Id.* at 6, 42. Award was to be made on a best-value tradeoff basis, considering the following factors, in descending order of importance: technical approach, management approach, past performance, and price. *Id.* at 37. In order to receive award, an offeror’s proposal was required to receive a rating of acceptable or higher under the technical approach and management approach factors, and a rating of satisfactory confidence or higher under the past performance factor.² *Id.*

The agency received five proposals by the due date for receipt of proposals. AR, Tab 2, Contracting Officer Statement (COS) at 9. The agency established a competitive range, and held discussions with three offerors, including TCG and Red Carrot. The source selection authority (SSA) concluded that Red Carrot offered the best value to the government and issued Red Carrot an order with a value of \$9,337,987. *Id.* On October 10, 2017, TCG filed a protest with our Office contesting the issuance of the order to Red Carrot. TCG Protest (B-415521). Prior to the due date for the agency report, the agency notified our Office that it intended to take corrective action by canceling the award, reopening discussions with the three offerors in the competitive range, receiving and evaluating revised proposals, and issuing a new award decision. Agency Corrective Action Notice, Nov. 1, 2017. As a result, our Office dismissed TCG’s protest as academic. *TCG Consulting, Inc.*, B-415521, Nov. 6, 2017 (unpublished decision).

The agency received and evaluated revised proposals, again concluded that Red Carrot’s proposal offered the best value to the government, and issued Red Carrot an order with a value of \$8,781,221. AR, Tab 30, Source Selection Decision Document (SSDD) at 4. On May 21, 2018, TCG again protested the agency’s award to Red Carrot, which our Office docketed as B-415521.2. Prior to the due date for the agency report, the agency again notified our Office that it intended to take corrective action by reevaluating TCG’s and Red Carrot’s proposed management approach consistent with

² Although the solicitation was issued as a Federal Acquisition Regulation (FAR) part 8 procurement, it included references to “offerors” and “proposals,” and the agency referred to it as a request for proposals. Solicitation at 36, 1. Because the distinction between a vendor’s submission of a quotation and an offeror’s submission of a proposal has no bearing on our analysis in this protest, we use the terms as they appear in the record.

the solicitation's evaluation criteria and making a new best-value source selection and award decision. Agency Corrective Action Notice, June 20, 2018. Our Office dismissed TCG's protest as academic. *TCG Consulting, Inc.*, B-415521.2, June 28, 2018 (unpublished decision).

The agency reevaluated proposals as follows:

	Red Carrot	TCG
Technical Approach Factor	Outstanding	Outstanding
Management Approach Factor	Good	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Total Evaluated Price	\$8,781,221	\$8,180,332

AR, Tab 36, Second SSDD at 26.

The reevaluation resulted in a change in TCG's proposal rating from good to acceptable under the management approach factor. COS at 24. The agency again decided that Red Carrot offered the best value to the government, and issued an order to Red Carrot.

On September 25, 2018, TCG filed a third protest with our Office challenging the award to Red Carrot, which our office docketed as B-415521.3. TCG challenged the agency's evaluation of its proposal under the management approach factor, the agency's evaluation of Red Carrot's proposal under each of the evaluation factors, the agency's responsibility determination for Red Carrot, and the agency's best-value tradeoff. *Id.* After receipt of the agency report, TCG filed its comments on the agency report and raised nine supplemental protest grounds, including an allegation that to the extent Red Carrot's proposal included action performers in the labor categories of its FSS contract, the award to Red Carrot was improper because such action performers were not included in any labor categories listed in Red Carrot's FSS contract. TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018 at 6 n.2.

On December 18, after the agency filed its supplemental agency report and the protester and intervenor filed supplemental comments, the GAO attorney assigned to this protest conducted a conference call with the parties to discuss the protest. During this conference call, the GAO attorney raised a concern that providing action performers in the labor categories listed in Red Carrot's GSA schedule was outside the scope of Red Carrot's GSA schedule contract. The GAO attorney also questioned whether this supplemental protest ground was timely raised in TCG's supplemental protest as Red Carrot's FSS contract is a publicly available document. At the conclusion of the conference call, the GAO attorney asked that parties provide responses to specific questions, which were due by December 20. TCG and Red Carrot filed responses by December 20, and the agency filed a request that our Office dismiss the protests as academic because it was going to cancel the award to Red Carrot, and procure this requirement under a different contract vehicle. Agency Corrective Action Notice, Dec. 20, 2018. Our Office dismissed TCG's protest and supplemental protest as

academic. *TCG Consulting, Inc.*, B-415521.3, B-415521.4, Dec. 26, 2018 (unpublished decision).

Following the dismissal of its protest, TCG filed this request that GAO recommend that it be reimbursed the reasonable costs of filing and pursuing its protests.

DISCUSSION

TCG requests that our Office recommend that the agency reimburse TCG its reasonable costs of filing and pursuing each of its protests (B-415521, B-415521.2, B-415521.3, and B-415521.4).

TCG first requests that our Office recommend reimbursement of the reasonable costs of filing and pursuing its first two protests, B-415521, B-415521.2. TCG argues that the agency's first and second corrective actions were "ineffective," and therefore forced it to incur the further cost of protesting a third time. Protester's Request for Recommendation of Protest Costs, Jan. 10, 2019, at 7 *citing Louisiana Clearwater, Inc.--Recon. & Costs*, B-283081.4, B-283081.5. Apr. 14, 2000, 2000 CPD ¶ 209 at 5-6 (reimbursement of protest costs may be appropriate where the agency has promised to take corrective action leading to dismissal of a clearly meritorious protest and either (1) does not timely implement the promised corrective action, or (2) implements inadequate corrective action).

The agency responds that the record does not support TCG's position that the agency failed to implement its corrective action regarding TCG's first two protests. Agency Response to Protester's Request for Recommendation of Protest Costs (Jan. 25, 2019), at 11. Rather, the agency maintains that the record demonstrates that following the first notice of corrective action, the agency reopened discussions, allowed offerors to submit revised proposals, evaluated the revised proposals, and issued a new award decision. Similarly, the agency argues that following the second notice of corrective action, the agency reevaluated TCG's and Red Carrot's proposed management approach, made a new best-value source selection decision, and award.

We deny TCG's request for a recommendation for reimbursement of costs with regard to TCG's first two protests. Where an agency takes corrective action on or before the due date set for receipt of the agency report, our Office views such action as prompt and will not recommend the reimbursement of costs. *Innovative Techs., Inc.--Costs*, B-415810.3, Mar. 12, 2018, 2018 CPD ¶ 107 at 2. In addition, under these circumstance, we disagree with TCG that the situation here is sufficiently similar to what transpired in *Louisiana Clearwater* such that the agency, in essence, failed to implement promised corrective action to address a specific meritorious issue. Our Office has explained in several decisions that the principles set forth in *Louisiana Clearwater* address a narrow range of circumstances, namely, those where an agency fails to implement corrective action in good faith in response to a clearly meritorious protest. *Ace Info Solutions, Inc.--Costs*, B-414650.27, May 14, 2019, 2019 CPD ¶ 179 at 6.

The protester next requests that our Office recommend reimbursement of the reasonable costs of filing and pursuing its third protest (B-415521.3), filed on September 25, 2018, and the supplemental protest (B-415521.4), filed on November 23. The protester argues that its protest grounds were clearly meritorious, and that the agency unduly delayed in taking corrective action in the face of its clearly meritorious protest grounds.

The agency responds that it agrees to pay TCG's costs with regard to the issue raised in its supplemental protest regarding the lack of a labor category in Red Carrot's FSS schedule for action event performers. Agency Response to Protester's Request for Recommendation of Protest Costs (Jan. 25, 2019), at 13. The agency argues that the remaining issues raised in the third protest and supplemental protest were not clearly meritorious and were based on a different set of facts. *Id.* at 15-28. Thus, the agency contends that these remaining protest grounds are severable from the issue for which it agreed to pay the protester's reasonable costs, and the protester should not be reimbursed its reasonable costs for pursuing these issues. *Id.*

Our Bid Protest Regulations provide that where an agency takes corrective action in response to a protest, our Office may recommend that the agency pay the protester its reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.8(e). However, our Regulations do not contemplate a recommendation for the reimbursement of protest costs in every case where an agency takes corrective action, but rather only where an agency unduly delays taking corrective action in the face of a clearly meritorious protest. *Information Ventures, Inc.--Costs*, B-294580.2 *et al.*, Dec. 6, 2004, 2004 CPD ¶ 244 at 2. Thus, as a prerequisite to our recommending the reimbursement of costs where a protest has been resolved by corrective action, not only must the protest have been meritorious, but it also must have been clearly meritorious, *i.e.*, not a close question. *Overlook Sys. Techs., Inc.--Costs*, B-298099.3, Oct. 5, 2006, 2006 CPD ¶ 184 at 6. A protest is clearly meritorious where a reasonable agency inquiry into the protester's allegations would reveal facts showing the absence of a defensible legal position. *Id.*

We do not recommend reimbursement of the costs of pursuing the protester's contention that Red Carrot improperly included action performers in the labor categories of its FSS contract as these performers would be outside of the scope of its FSS contract. TCG Comments & Supp. Protest, B-415521.4, at 6 n.2. While the agency has indicated that it agrees to reimburse the protester for the costs associated with this issue, our Office declines to recommend reimbursement of these costs because, as discussed below, this protest ground was untimely and therefore not clearly meritorious.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Our Office will not hear protests that could have and should have been raised in earlier protests. *See, Savvee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5; *see also, DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21. In addition, our Office has found that the protester is not entitled to recover protest costs

where the record shows that the protest ground was in fact untimely since a prerequisite to recovery of such costs is a clearly meritorious protest pending before our Office at the time the procuring agency takes corrective action, and a clearly meritorious protest cannot stem from an untimely protest allegation. *Allied Materials & Equip. Co.--Costs*, B-243631.3, Oct. 31, 1991, 91-2 CPD ¶ 412 at 3.

Red Carrot was initially selected for award in September of 2017. TCG failed to assert a protest challenge that the action event performers were outside of the scope of Red Carrot's FSS contract's labor categories with our Office until November 23, 2018 in its comments to the agency report on its third protest.³ TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 6 n.2. Since the labor categories included in Red Carrot's schedule contract were known, or could have been known, to the protester from Red Carrot's FSS, publicly available on the GSA Advantage website, and since TCG failed to raise this challenge in its prior protests, we find this allegation untimely. While TCG argues that it did not have the information necessary to raise this protest until it received Red Carrot's proposal with the agency report, we find this argument unavailing. In this regard, the solicitation stated that the contractor shall provide all personnel, and further stated that the contractor "shall perform" a minimum of 500 action/extreme sports type events within high schools and colleges across the United States. RFP, PWS 1.1, 5.2 at 5, 16. Here, TCG knew that Red Carrot was the awardee and had access to the publicly available labor categories found in Red Carrot's schedule contract. As such, TCG had enough information to raise this protest in its earlier protests. This protest ground is therefore untimely and not clearly meritorious.

Additionally, based on our review of the record, we find that none of TCG's remaining protest allegations in its third protest or its supplemental protest were clearly meritorious. Although we discuss only representative examples below, we have reviewed each of the protester's arguments, and find no basis to grant the request.

Management Approach

TCG argues that the agency evaluated proposals unreasonably and disparately under the management approach factor. TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 15. In this regard, TCG contends that the agency unreasonably assigned Red Carrot's proposal a rating of good under the management approach factor based on a single undeserved strength regarding Red Carrot's plan to have its account manager engage with the appropriate National Guard marketing NCO prior to booking the school. TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 16. TCG also contends that the agency disparately evaluated proposals because it failed to credit TCG with a similar strength for features in its proposal such as its use of Guard School coordinators and an internal calendar and database of events, which it

³ TCG's first protest did argue that the award to Red Carrot was outside of the scope of Red Carrot's FSS contract because the award exceeded the order limitation in Red Carrot's contract. TCG Protest, B-415521, at 11.

argues would achieve the same outcomes as those provided by Red Carrot's proposal.⁴ *Id.*

Where, as here, an agency issues a solicitation to Federal Supply Schedule contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Digital Solutions, Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's evaluation conclusion, without more, does not provide a basis for our Office to object to the evaluation. *Id.* at 6. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. See, *A-Tek, Inc.*, B-404581.3, Aug. 22, 2011, 2011 CPD ¶ 188 at 8.

TCG challenges the agency's assignment of a new strength to Red Carrot's proposal for its plan to have its account manager contact the appropriate marketing NCO prior to booking the school. TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 16. The protester contends that the agency improperly awarded Red Carrot's proposal a strength based on a vague, conclusory, and unsupported description of this proposal feature. TCG argues that Red Carrot's proposal did not identify the purpose or explain the process concerning its proposed pre-booking communications with marketing NCO's, nor did it explain how this feature would generate actual leads. *Id.* at 17-18.

The agency responds that it properly assigned Red Carrot's proposal a strength and a rating of good under the management approach factor because Red Carrot's proposed coordination prior to scheduling events exceeded the requirements of the solicitation to coordinate within two business days following the scheduling of an event.⁵ RFP,

⁴ TCG further alleges that the agency improperly withdrew a strength for these features that had previously been assigned to TCG's proposal, and failed to reasonably explain why these features were no longer considered a strength in the reevaluation. TCG Comments & Supp. Protest at 21-23. We do not find this protest ground clearly meritorious. Rather, the record demonstrates that the agency, in its reevaluation, explained why the features that TCG was proposing met, but failed to exceed, the solicitation requirement therefore no longer meriting a strength.

⁵ The agency also withdrew Red Carrot's previously assigned strength for a digitized turnkey solution to deliver digital leads within 24 hours because the agency determined that this feature did not exceed the requirements of the solicitation. AR, Tab 34, Management Approach Reevaluation for Red Carrot, at 2-3.

Performance Work Statement (PWS) 5.16 at 19; Supp. COS at 5. The agency concluded that:

This type of early engagement with each State's marketing personnel gives the Government crucial input in the selection of schools, ensuring resources are not spent on schools which have already been successfully penetrated, nor on schools which are not desirable to the local recruiting force. This level of coordination goes above and beyond the requirement of evaluation factor 4.3.2 and PWS section 1 and paragraphs 5.2, 5.15 and 5.16.

AR, Tab 34, Management Approach Reevaluation for Red Carrot, at 2. This additional level of effort was viewed as being of significant value to the government due to the significant difficulty that recruiters face penetrating some schools. *Id.* The agency found that having the proposed account manager engage with the state National Guard marketing NCOs prior to placing an event at a school would ensure that the program would target more schools and, in turn, create more leads. *Id.*

The protester has failed to show that the agency unreasonably assigned a strength for Red Carrot's plan to have its proposed account manager engage with the state National Guard marketing NCOs prior to placing an event at a school. The agency determined that this feature of Red Carrot's proposal exceeded solicitation requirements, and that coordinating with the state National Guard marketing NCOs prior to scheduling an event at a particular school would be a better use of resources, result in action based programming in a wider range of schools, and result in more lead generation. The protester's disagreement regarding the agency's evaluation in this area does not establish that the agency's evaluation was unreasonable, much less that its protest ground was clearly meritorious.

TCG next argues that the agency disparately evaluated proposals under the management factor. In this regard, TCG complains that the agency improperly failed to assign its proposal a strength similar to the strength assigned to Red Carrot's proposal even though TCG's proposal would achieve the same outcomes as the features proposed by Red Carrot.

We find TCG's argument unavailing. The record does not indicate that the offerors proposed the same features and were evaluated differently. Rather, the record demonstrates that the offerors proposed different features and reasonably received different evaluation outcomes, with some features receiving a strength and some features not receiving a strength. In sum, while the protester may believe that its proposal contained features that were substantially similar to, or provided the same benefit as the features proposed by Red Carrot, we find TCG's disagreement with the agency's judgment insufficient to establish that the agency acted unreasonably. *AMTIS-Advantage, LLC*, B-411623; B-411623.2, Sept. 16, 2015, 2015 CPD ¶ 360 at 6. Therefore, this protest ground is not clearly meritorious.

Price Evaluation

The protester next complains that the agency failed to perform an adequate price realism analysis as required by the solicitation. TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 3-9. The solicitation stated that an offeror's proposed price must demonstrate a complete understanding of the PWS requirements in relation to the Technical Approach and Management Approach. Solicitation at 43. TCG contends that Red Carrot proposed a total of 28,964 labor hours in the base year, 11,256 fewer hours than TCG proposed. AR, Tab 21, Red Carrot Vol IV, Price Proposal at 3; Tab 15, TCG Pricing Proposal Matrix. *Id.* at 4. According to TCG, had the agency performed a proper price realism analysis of Red Carrot's proposal, it would have found that the firm did not understand the level of resources needed to successfully perform this requirement, leading it to "grossly underestimate the level of effort necessary to successfully perform what it promised." TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 8.

The agency responds that it properly evaluated Red Carrot's proposal and that there was no indication in any of its proposal volumes that it could not perform as it proposed. COS at 65. The agency determined that Red Carrot's proposed labor mix (labor categories and hourly rates) were adequate for this effort, especially given Red Carrot's "IT centric" approach. AR, Tab 36, Second SSDD at 14. The agency notes that Red Carrot is the incumbent prime contractor, and is familiar with the solicitation requirements. COS at 57. According to the agency, the protester's main contention is that Red Carrot cannot perform the contract without undue reliance on its subcontractor, AGA Nation. However, the agency argues that AGA Nation's skillset, providing action shows, is not unique to AGA Nation, and these services are widely offered throughout the industry and are commercially available through several sources.⁶ *Id.* at 65.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring an offeror's understanding of the requirements or assess the risk inherent in an offeror's proposal. *Argus Int'l Risk Servs., LLC*, B-411682, B-411682.2, Sept. 25, 2015, 2015 CPD ¶ 303 at 4.

Because below-cost proposals are not inherently improper when offerors or vendors are competing for award of a fixed-price contract, companies must be given reasonable notice that their business decision to submit a low-priced proposal will be viewed negatively by the government in assessing their understanding of the risk associated with performance. *Triad Int'l Maint. Corp.*, B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 11. In other words, offerors or vendors must be reasonably informed that a price realism analysis will occur, and, in circumstances where price realism is not explicitly called for in the solicitation, vendors or offerors must be reasonably informed that negative consequences may result. See, e.g., *DynCorp Int'l LLC*, B-407762.3, June 7,

⁶ AGA Nation was Red Carrot's previous subcontractor, and is now TCG's proposed subcontractor. AR, Tab 41, Supp. COS at 7.

2013, 2013 CPD ¶ 160 at 9 (where an agency seeks to reject an unrealistically low-priced proposal, the solicitation must state that proposals can be rejected for offering low prices).

We will review an agency's price realism evaluation only to determine whether it was reasonable and consistent with the solicitation's requirements. *Chameleon Integrated Servs.*, B-407018.3, B-407018.4, Feb. 15, 2013, 2013 CPD ¶ 61 at 6. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. *Navistar Defense, LLC; BAE Sys., Tactical Vehicle Sys. LP*, B-401865 *et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 17. For procurements conducted pursuant to FAR subpart 8.4 that require a statement of work, such as this one, the FAR designates limited documentation requirements. *Longevity Consulting, LLC*, B-415596.2, July 17, 2018, 2018 CPD ¶ 373 at 7. In a FAR subpart 8.4 procurement, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. *Id.*

Here, we need not determine whether a price realism analysis was required by the language of the solicitation.⁷ In this regard, even if a price realism analysis was required by the solicitation, the protester's allegation is not clearly meritorious. The record contains evidence that the agency evaluators considered Red Carrot's labor mix and hourly rates and determined that Red Carrot's price was realistic. AR, Tab 36, Second SSDD at 14-15; AR Tab 29, Red Carrot Price Evaluation, at 3. The contracting officer further explained that there was nothing in any of the proposal volumes that led the agency to question that Red Carrot would not be able to perform as proposed. In addition, the contracting officer explained that the total hours proposed include both the prime and any subcontractors; Red Carrot consolidated its other direct costs and labor costs into the service CLIN of its price proposal; and the agency was able to separate these costs in its evaluation. AR, Tab 33.01, Supp. COS, B-415521.4, at 1-2. In addition, Red Carrot's proposed labor hours and costs for services were consistent with the previous NGB action events program contract that Red Carrot performed as the incumbent and prime contractor. *Id.*, at 9; Tab 33, Supp. Legal Memorandum, B-415521.4, at 8. As a result, this allegation is not clearly meritorious.

Best-Value Determination

Finally, TCG raises multiple challenges to the agency's best-value tradeoff decision. For example, the protester alleges that because TCG and Red Carrot were evaluated as relatively similar in technical merit, TCG's lower cost should have been the determining factor in the source selection. TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 9. We find that the protester's allegations are not clearly meritorious. Rather, the record reflects that the agency's source selection decision was

⁷ While the parties state that a price realism analysis was required and the record includes an explanation from the agency that the discussions letters clarified that a price realism analysis would be conducted (AR, Tab 29, Price Analysis of Red Carrot's Proposal, at 3-4), the record provided to our Office does not include the discussions letters.

reasonable, consistent with the solicitation's evaluation criteria, and adequately documented. For example, the SSA recognized that both TCG and Red Carrot received the same adjectival rating under the technical approach factor. Nonetheless, the SSA explained that Red Carrot's "IT [Information Technology] centric" technical approach rendered Red Carrot's proposal superior to TCG's proposal under this factor, and justified the additional price premium. AR, Tab 36, Second SSDD at 28-29. With regard to the management approach factor, the SSA noted the lack of any strengths assigned to TCG's proposal under this factor and stated that Red Carrot's assigned strength "strengthens my decision in rendering their proposed [m]anagement [a]pproach as superior and thereby justifies the \$600,888.78 premium." *Id.* at 29.

TCG also contends that the agency's best-value determination was unreasonable in light of the alleged evaluation errors. TCG Comments & Supp. Protest, B-415521.4, Nov. 23, 2018, at 10-28. However, as we find that none of the allegations raised by TCG in its third protest and supplemental protest, meet the high bar set by the clearly meritorious standard, we find no basis to find that the protester's challenges to the agency's source selection decision in this regard are clearly meritorious.

Since none of TCG's allegations were clearly meritorious, the fact that the agency decided to take corrective action after filing its agency report and supplemental agency report does not support a recommendation that the agency reimburse TCG its protest costs.

The request for a recommendation of reimbursement of protest costs is denied.

Thomas H. Armstrong
General Counsel