

Decision

Matter of: Iron Mountain Information Management, LLC—Costs

File: B-418797.4

Date: June 23, 2021

Michael Samuels, Esq., Alexandra Barbee-Garrett, Esq., and Daniel Forman, Esq., Crowell & Moring LLP, for the protester.
Francis Gainer, Esq., and John Huebl, Esq., Department of Veterans Affairs, for the agency.
Mary G. Curcio, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. GAO recommends reimbursement of protest costs where, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest; GAO's willingness to engage in outcome prediction alternative dispute resolution procedures to advise the parties that an issue will likely be sustained also indicates that we will likely view those grounds as meeting the clearly meritorious element of the standard for recommending the reimbursement of protest costs.
 2. GAO recommends reimbursement of protest costs for challenge to best-value determination since that basis of protest is intertwined with clearly meritorious protest grounds.
 3. GAO does not recommend reimbursement of protest costs with regard to protest grounds that are severable from the successful protest grounds.
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DECISION

Iron Mountain Information Management, LLC, of Boston, Massachusetts, requests that we recommend that it be reimbursed the costs of filing and pursuing its protest against the Department of Veterans Affairs's (VA) issuance of a task order to Sourcecorp BPS

Inc. under request for quotations (RFQ) No. 36C10E20Q0090, for records management services.¹

We grant the request in part and deny it in part.

BACKGROUND

The VA issued the RFQ on April 24, 2020, for records management services, including source material storage and disposition. Agency Report (AR), Tab 5, RFQ at 1. Competition was limited to vendors that held a relevant General Services Administration (GSA) Federal Supply Service (FSS) contract. The task order was to be issued on a best-value tradeoff basis considering price and two non-price factors--technical (with subfactors for technical approach, and capability and experience) and past performance. *Id.* at 14, 15.

Quotations were submitted by Sourcecorp and Iron Mountain on May 22. *Id.* at 7. As relevant to this protest, in July, after quotations were submitted, but before the task order was issued, Sourcecorp and its corporate assets, except for the relevant FSS contract, were sold by its parent corporation Exela to Retrievox. Protest at 9; Comments on Agency Report at 4. Following the submission and evaluation of quotations, the agency issued a task order to Sourcecorp on November 18. AR, Tab 1, Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 11. The GSA FSS schedule contract was novated to Retrievox on December 3. COS/MOL at 15. The VA learned of the sale on December 14 after receipt of Iron Mountain's protest. Agency Resp. to Req. for Additional Information at 12.

Iron Mountain filed its protest with our Office on December 14, and a supplemental protest on January 25. In those protests, Iron Mountain asserted that: (1) the VA did not consider the impact of Sourcecorp's sale to Retrievox on Sourcecorp's ability to perform the contract; (2) Sourcecorp and its parent corporation Exela failed to inform the agency that Sourcecorp and its assets had been sold; (3) the VA unreasonably evaluated the vendors' prices because, in computing the total evaluated price, the agency erroneously included the price for the destruction and transfer of records in each year of performance, even though the records could only be transferred and destroyed once; (4) the agency unreasonably assessed a significant weakness against Iron Mountain's quotation for an inadequate transition plan where no transition plan was required by the solicitation; (5) the agency used transition time--an unstated evaluation factor--in assessing Iron Mountain's quotation; (6) the agency unreasonably assigned a weakness to Iron Mountain's quotation for failure to identify any quality measures or processes; (7) the agency failed to assign a significant weakness or deficiency to Sourcecorp's quotation for its plan to destroy documents; (8) the agency should have

¹ The solicitation contemplated awards for two different geographical areas--project A (Virginia and Illinois) and project B (California and Texas). The protest and request for recommendation of protest costs concerns project A.

assessed Sourcecorp's current responsibility; and (9) the listed errors tainted the best-value determination.²

The VA submitted a report responding to the protest on January 13, 2021, a supplemental report on February 1, and a response to a request for additional information from GAO on February 16. Iron Mountain submitted comments on the agency's report, the supplemental report, and the response to GAO's request for additional information on January 25, February 3, and February 18, respectively.

On March 1, the parties participated in an alternative dispute resolution conference. During the conference, the cognizant GAO attorney advised the parties that Iron Mountain's challenge to the evaluation of total evaluated price, raised after the due date for quotations, would be dismissed as an untimely challenge to the solicitation because the agency evaluated price in accordance with the method specified in the solicitation. See 4 C.F.R. § 21.2 (a). The GAO attorney also explained that Iron Mountain's assertion that the agency was required to perform a new responsibility determination on Sourcecorp would be dismissed because agencies are not required to determine responsibility when placing an order under an FSS contract. See *Advanced Technology Systems, Inc.*, B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151.

The GAO attorney further informed the parties that GAO would likely sustain Iron Mountain's argument that in evaluating Sourcecorp's quotation the agency failed to consider the impact of Sourcecorp's sale to Retrievox, and that Exela or Sourcecorp should have informed the agency of this transaction. In addition, the attorney advised that GAO was likely to sustain Iron Mountain's challenge to the evaluation of Sourcecorp's proposed plan for document destruction. Finally, the attorney informed the parties that GAO would deny all other protest grounds.

On March 3, the agency advised GAO that it would take corrective action with respect to the protest. Notice of Corrective Action and Req. for Dismissal. Specifically, the agency would either hold discussions with offerors, solicit revised quotations, and issue a new award decision, or issue a revised RFQ. We dismissed the protest as academic on March 9. *Iron Mountain Information Management LLC*, B-418797.2, B-418797.3, Mar. 3, 2021, (unpublished decision). On March 24, Iron Mountain filed a timely request, pursuant to 4 C.F.R. § 21.8, that we recommend that it be reimbursed the costs of filing and pursuing its protest.

² In its initial protest, Iron Mountain also argued that Sourcecorp was not eligible to be awarded a task order because it did not hold an FSS contract, and that the agency failed to consider whether Sourcecorp's price proposal was unbalanced. The agency responded to these arguments in its report, and Iron Mountain did not further pursue them in its comments on the report. We therefore considered them abandoned. See *Jacobs Tech, Inc.*, B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 5.

DISCUSSION

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs if, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.8(e); *AAR Aircraft Servs.--Costs*, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. A protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. *Core Tech Int'l Corp.--Costs*, B-400047.2, Mar. 11, 2009, 2009 CPD ¶ 59 at 6.

Here, our willingness to inform the parties through outcome prediction ADR that the protest was likely to be sustained on the impact of the sale of Sourcecorp, and on the issue of the evaluation of Sourcecorp's proposal with respect to document destruction, was an indication that we view those grounds as meeting the clearly meritorious element of deciding whether to recommend reimbursement of protest costs. *National Opinion Research Center-Costs*, B-289044.3, Mar. 6, 2002, 2002 CPD ¶ 55 at 3. In this regard, we indicated that we would likely sustain Iron Mountain's protest that the agency failed to evaluate the impact of Sourcecorp's sale to Retrievox because the agency evaluated the quotation without considering whether Retrievox would have the resources to perform in accordance with the quotation Sourcecorp submitted. We also advised the parties that we would likely sustain Iron Mountain's challenge to the evaluation of Sourcecorp's plan for document destruction because the solicitation required vendors to use shredders that were capable of shredding or incinerating materials, and in its quotation Sourcecorp did not elaborate on the equipment it would use for material destruction.

Further, we do not generally consider corrective action to be prompt if it is taken after the due date for the agency report responding to the protest. *CDIC, Inc., Costs*, B-277526.2, Aug. 18, 1997, 97-2 CPD ¶ 52 at 2. Here, the VA did not take corrective action until after it filed the agency report, the supplemental agency report, and participated in the ADR conference. We therefore recommend that Iron Mountain be reimbursed its protest costs for its clearly meritorious issues that were raised in its very first protest filing—*i.e.*, the issues related to the change in ownership of Sourcecorp, and the evaluation of Sourcecorp's quotation with respect to document destruction.

With respect to the remaining issues, we will consider a request to limit a recommendation for reimbursement of protest costs where the successful and unsuccessful protest grounds are clearly severable. *See, e.g., BAE Technology Services, Inc.-Costs*, B-296699.3, Aug. 11, 2006, 2006 CPD ¶ 122 at 3. In making this determination, we consider, among other things, the extent to which the claims are interrelated or intertwined, *e.g.*, whether the successful and unsuccessful claims share a common core set of facts, are based on related legal theories, or are otherwise not readily severable. *See Sodexo Management, Inc.-Costs*, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 29.

Iron Mountain's challenge to the evaluation of its own proposal and the responsibility determination are severable from the specific grounds on which, as we advised the parties, Iron Mountain was likely to prevail. We agree with the agency that these grounds were based on a legal theory and facts sufficiently different from those on which Iron Mountain's other evaluation arguments were based such that severing the issues is appropriate in this case. Neither of these issues concerned the agency's failure to evaluate the effect of the awardee's corporate transaction or the evaluation of the awardee's proposal, which were the two issues that we stated we would likely sustain. Iron Mountain, however, is entitled to recover the costs associated with its challenge of the agency's best-value decision since that is interrelated with its challenge to the evaluation of the awardee's proposal.

The request for a recommendation for reimbursement of protest costs is therefore granted in part and denied in part. Specifically, as discussed above, GAO recommends that Iron Mountain be reimbursed its protest costs incurred in relation to the issues of the change in ownership of Sourcecorp, the evaluation of Sourcecorp's quotation with respect to document destruction, and the best-value determination. The request for reimbursement of the costs related to all the other issues is denied. Iron Mountain should submit its certified claim, detailing the time spent and costs incurred directly to the agency within 60 days of its receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The request is granted.

Thomas H. Armstrong
General Counsel