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# Decision

**Matter of:** CW Government Travel, Inc.--Costs

**File:** B-419193.3

**Date:** May 6, 2021

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## DIGEST

Request that GAO recommend reimbursement of protest costs is granted where the initial protest arguments challenging the evaluation of the awardee's quotation under the technical approach and past performance factors were clearly meritorious because a reasonable inquiry by the agency would have identified the basis on which the agency took corrective action, and where the agency unduly delayed taking corrective action in response to the protest.

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## DECISION

CW Government Travel, Inc. (CWT), of Arlington, Virginia, requests that our Office recommend that the General Services Administration (GSA) reimburse the firm its reasonable costs of filing and pursuing its protest (B-419193, B-419193.2). CWT challenged the issuance of a task order to BCD Travel USA, LLC (BCD), of Buffalo Grove, Illinois, under request for quotations (RFQ) No. 47QMCB20Q0010, which was issued by GSA for travel management company (TMC) services for the Department of the Army. CWT argues that the agency unduly delayed taking corrective action in response to what the requester contends were its clearly meritorious challenges to the agency's evaluation of BCD's quotation under the technical approach and past performance factors.

We grant the request.

## BACKGROUND

GSA issued the RFQ on May 13, 2020, under the Federal Supply Schedules (FSS) provisions of Federal Acquisition Regulation subpart 8.4. Agency Report (AR), Exh. 2,

RFQ at 1.<sup>1</sup> The solicitation was limited to vendors<sup>2</sup> who hold FSS contract special item number 561510, travel agent services, and sought quotations to provide “travel services support for authorized travelers on official travel for designated United States Army activities and facilities throughout the [Department of Defense] in the contiguous United States (CONUS), [Army Corps of Engineers] Alaska and Hawaii locations, Puerto Rico and the U.S. Virgin Islands.” *Id.* at 5. The contractor will be required to provide “personnel, equipment, facilities, licenses, materials, resources, supplies, and services” necessary to meet all requirements of the performance work statement (PWS). *Id.* at 5. The RFQ anticipated the issuance of a task order with fixed-prices for contract line item numbers (CLINs) with a base period of 1 year and four 1-year options. *Id.* at 16-22.

The RFQ stated that quotations would be evaluated on the basis of the following five factors: (1) TMC passenger name record (PNR) validation, (2) technical approach, (3) past performance, (4) small business participation, and (5) price.<sup>3</sup> *Id.* at 104. The TMC PNR validation factor and the small business participation factor were to be evaluated on a pass/fail basis and acceptable/unacceptable basis, respectively. *Id.* at 104-05, 108-09. The technical approach factor identified six criteria: (1) technical approach, (2) corporate experience, (3) implementation and transition, (4) central billing account (CBA) reconciliation process, (5) key personnel plan, and (6) qualification of key personnel. *Id.* at 106-07. The RFQ did not specify the relative weights of these criteria, and did not provide for the assignment of separate adjectival ratings. *See id.*

The RFQ provided that award would be made on a best-value tradeoff basis, and that “[t]he Government may elect to award to other than the lowest priced Offeror, or other than the highest technically rated Offeror.” *Id.* at 104. With regard to a tradeoff decision, the solicitation advised that “[t]he Government is more concerned with obtaining superior technical features than with making award at the lowest price to the Government[,]” but further stated that “the Government will not make an award at a significantly higher overall price to the Government to achieve slightly superior technical features.” *Id.*

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<sup>1</sup> Page citations are to the Adobe PDF document pages provided in the agency report.

<sup>2</sup> Although firms that compete for task orders under FSS contracts are generally referred to as “vendors” that submit “quotations,” the record and the parties’ briefings use these terms as well as the terms “offerors” and “proposals,” interchangeably. Our decision uses the terms vendors and quotations for the sake of consistency.

<sup>3</sup> For price, vendors were required to submit fixed-price fees for transactions and tasks. RFQ at 109. The management service fee (MSF) pricing methodology “consists of charging a fixed fee per month for full performance of all contract requirements,” while the point of sale (POS) pricing methodology provides for fees assessed at the time a transaction occurs. *Id.* at 13.

GSA received quotations from three vendors, including CWT and BCD, by the closing date of July 27. AR, Ex. 12, Price Negotiation Memorandum (PNM)<sup>4</sup> at 2; RFQ at 97. The agency conducted discussions with vendors on September 3, and requested responses to questions. Contracting Officer's Statement at 11-12. The agency evaluated CWT's and BCD's quotations and discussions responses as follows:<sup>5</sup>

	BCD	CWT
<b>TMC PNR Validation</b>	Pass	Pass
<b>Technical Approach</b>	Outstanding	Good
<b>Past Performance</b>	Outstanding	Outstanding
<b>Small Business Participation</b>	Acceptable	Acceptable
<b>Evaluated Price (POS)</b>	\$46,805,913	\$53,630,009
<b>Evaluated Price (MSF)</b>	\$43,748,726	\$53,718,178

*Id.* at 12; PNM at 9.

The contracting officer, who was also the source selection authority, concluded that BCD's quotation provided the best value to the government because it was the most highly rated under the non-price factors and quoted the lowest overall price. *Id.* at 11. The agency awarded the task order to BCD on September 17. *Id.* at 12. The agency advised CWT of the award on September 18. AR, Exh. 14, Notice of Award, Sept. 18, 2020, at 1.

CWT filed a protest (B-419193) with our Office on September 25, challenging the award to BCD. CWT challenged the agency's evaluation of its quotation under the past performance factor, and BCD's quotation under the technical approach, past performance, and price factors. Protest at 2. The requester also argued that the agency conducted unequal and misleading discussions. *Id.*

GSA provided its report responding to the protest on October 26, and CWT and BCD filed comments on November 5. The requester's comments also included new supplemental arguments (B-419193.2) concerning the evaluation of BCD's quotation under the technical approach, past performance, and price factors; as relevant here, these new arguments included challenges to the awardee's transition plan and the relevance of one of its past performance references. Comments & Supp. Protest at 2-4. On November 13, prior to the time established by our Office for filing a supplemental agency report, GSA advised that it would take corrective action in response to the

<sup>4</sup> The PNM was the source selection decision document.

<sup>5</sup> For the technical approach factor, the agency assigned one of the following ratings: outstanding, good, acceptable, marginal, or unacceptable. RFQ at 105. For the past performance factor, the agency assigned one of the following ratings: outstanding, good, acceptable, neutral or unacceptable. *Id.* at 108.

supplemental protest. Notice of Corrective Action at 1. Specifically, the agency stated that “in light of the protestor’s November 5, 2020 comments and supplemental protest grounds with respect to BCD’s transition plan and the ratings from BCD’s past performance references, GSA will re-evaluate BCD’s quote and make a new source selection decision.” *Id.* The agency further stated that it would reevaluate BCD’s quotation in the areas of “proposed transition plan, past performance, key personnel, staffing, and technical aspects.” Response to Notice of Corrective Action, Nov. 16, 2020, at 1 (*quoting* email from GSA to CWT, Nov. 16, 2020). Based on the agency’s proposed corrective action, we concluded that the protest was rendered academic and dismissed it on November 17.<sup>6</sup> *CW Gov’t Travel, Inc.*, B-419193, B-419193.2, Nov. 17, 2020, at 1 (unpublished decision). This request for a recommendation for reimbursement of protest costs followed.

## DISCUSSION

CWT requests that we recommend that GSA reimburse the firm its costs of filing and pursuing its protest in connection with its challenges to the evaluation of BCD’s quotation under the technical approach and past performance factors. Request at 3. GSA contends that reimbursement is not warranted because the initial protest arguments were not clearly meritorious, and because the agency took timely corrective action only in response to the supplemental protest arguments. CWT counters that its initial protest arguments were clearly meritorious because, had the agency conducted a reasonable inquiry into these arguments, it would have identified a number of issues with the evaluation of BCD’s quotation that ultimately led to the agency’s corrective action. We agree with the requester that its arguments were clearly meritorious and that the agency did not take prompt corrective action.

When an agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs if, based on the record, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protestor to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. 4 C.F.R. § 21.8(e); *AAR Aircraft Servs.--Costs*, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5-6. As a general rule, as long as an agency takes corrective action in response to a protest by the due date of the agency report, we regard such action as prompt and will not grant a request to recommend reimbursement of costs. *Alsalam Aircraft Co.--Costs*, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 at 3.

A protest is clearly meritorious where it is not a “close question,” e.g., where a reasonable inquiry by the agency into the protest allegations would have revealed facts

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<sup>6</sup> On December 17, following the completion of the corrective action, GSA again selected BCD’s quotation for award of the task order. *CW Gov’t Travel, Inc.*, B-419193.4 *et al.*, Apr. 15, 2021, 2021 CPD ¶ \_\_\_ at 4-5. CWT filed a protest challenging the second award on January 7, 2021. Our Office denied this protest on April 15. *Id.* at 22.

showing the absence of a defensible legal position. *InfraMap Corp.--Costs*, B-405167.3, Mar. 26, 2012, 2012 CPD ¶ 123 at 3; *First Fed. Corp.--Costs*, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2. The fact that an agency decides to take corrective action does not necessarily establish that the protest was clearly meritorious, *i.e.*, that the agency did not have a defensible legal position. *Triple Canopy, Inc.--Costs*, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3.

As a general rule, a successful protester should be reimbursed its incurred costs with respect to all the issues pursued, not merely those upon which it has prevailed. *The Salvation Army Cmty. Corr. Program--Costs*, B-298866.3, Aug. 29, 2007, 2007 CPD ¶ 165 at 7. In appropriate cases, we have limited our recommendation for the award of protest costs where a part of those costs is allocable to an unsuccessful protest issue that is so clearly severable from the successful issues as to essentially constitute a separate protest. *Burns & Roe Servs. Corp.--Costs*, B-310828.2, Apr. 28, 2008, 2008 CPD ¶ 81 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 *Sodexho Mgmt., Inc.--Costs*, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 29.

#### Technical Approach Factor Evaluation

CWT argued in its initial protest that GSA unreasonably evaluated BCD's quotation in connection with all six criteria of the technical approach evaluation factor. Protest at 12-17. We agree with the requester that its arguments concerning the implementation and transition criterion under the technical approach factor were clearly meritorious and that the agency failed to take timely corrective action in response to them.

As relevant here, the implementation and transition criterion stated that quotations would be evaluated based on the following:

The Offeror's quote clearly demonstrates a complete understanding of the phase-in, phase-out process and addresses the contract requirements. The quote should clearly address, at a minimum, the Offeror's: 1) overall implementation approach to ensure that phase-in and phase-out transition services result in minimal disruption and diminution in the quality of services; 2) logistical plan to accomplish all "phase-in" activities in sufficient time for the start of performance under the new contract; and 3) plan to reconcile all forms of payment for 180 calendar days after performance end date in compliance with [Department of Defense] [online booking tool (OBT)] requirements.

*Id.* at 106. The contractor will be required to accomplish phase-in within 60 days of the date of award. RFQ at 72.

CWT argued that the agency's evaluation of BCD's quotation, which received an overall rating of outstanding for the technical approach factor, failed to consider the impact on phase-in of the awardee's need to "create anew" a CBA reconciliation process for performance of the task order. Protest at 14. The requester contended that, if the awardee proposed to use CWT's current CBA reconciliation system, such a representation would be "inaccurate."<sup>7</sup> *Id.* at 12-13. Alternatively, if the awardee proposed to develop a new system, CWT argued that such an approach would pose significant performance risks that merited a lower rating. *Id.*

GSA's response to the protest contended that BCD's quotation did not merit the assignment of any weaknesses. Memorandum of Law (MOL) at 8-9. Instead, the agency noted that its evaluation found that the quotation provided "a high level of confidence in its ability to implement and support TMC services on-time, with minimal [] diminution in the quality of services during phase-in and phase-out." *Id.* at 9 (*quoting* AR, Exh. 11, Technical Evaluation at 35). The agency concluded that the quotation "clearly demonstrated a complete understanding of the phase-in, phase-out process and addressed all requirements evaluated as part of the proposed Implementation and Transition." *Id.* at 9.

CWT's comments and supplemental protest argued that GSA failed to reasonably evaluate BCD's proposed transition and phase-in plan because the plan assumed a 73-day period, rather than the 60-day period required by the RFQ. Comments & Supp. Protest at 10. Specifically, the requester noted that BCD's quotation stated the following regarding the phase-in and transition, which translates to a 73-day phase-in: "Please note that we have built our plan assuming a contract award date no later than Monday, August 17, 2020, to allow for 60 days' transition and a Thursday, October 29, 2020 Go Live date." *Id.* (*quoting* AR, Exh. 6, BCD Technical Quotation at 63).

In response to CTW's comments and supplemental protest, the agency advised that it would take corrective action to reevaluate the awardee's proposed transition plan. Notice of Corrective Action at 1. GSA's response to the request here acknowledges that the corrective action was appropriate because, "[w]hile BCD's initial phase-in plan confirmed that they would finish all transition work by the 'Go Live' date," the awardee's quotation assumed a longer phase-in period than required by the RFQ.<sup>8</sup> Resp. to Request at 4. The agency contends, however, that the initial protest was not clearly meritorious because CWT's supplemental protest concerning the length of BCD's

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<sup>7</sup> According to CWT, the RFQ consolidated five existing task orders; CWT is the incumbent for four of the task orders and Omega World Travel is the incumbent for the fifth order. Protest at 3.

<sup>8</sup> The record provided by GSA in response to CWT's second protest, filed after the agency's corrective action and second award to BCD, shows that the agency assigned a weakness to BCD's proposal based on its proposed phase-in, and that the agency reduced the rating for the awardee's quotation under the technical approach factor from outstanding to good. *CW Gov't Travel, Inc., B-419193.4 et al., supra*, at 4, 6.

proposed phase-in period was not related to its initial arguments concerning the challenges that the awardee would experience in achieving the phase-in within the required period. See *id.*

We conclude that CWT's arguments were clearly meritorious because, at their core, the requester argued that the awardee's proposed transition should have been assigned a weakness or risk because it could not have met the RFQ's requirements. See Protest at 14. Although the agency contends that the requester's initial arguments were speculative or inaccurate, a reasonable inquiry into these arguments should have included a review of the awardee's quotation and the agency's evaluation. The record shows that the awardee's quotation clearly proposed a phase-in period that did not meet the RFQ's requirement. See AR, Exh. 6, BCD Technical Quotation at 63. We therefore find that the requester's initial protest arguments were clearly meritorious because a reasonable inquiry into these arguments would have found that BCD's phase-in plan failed to meet the RFQ requirement. Because the agency did not take corrective action until after CWT filed its comments and supplemental protest, we also find that the corrective action was unduly delayed. We therefore recommend reimbursement of CWT's costs for pursuing this protest issue.

#### Past Performance Evaluation

CWT argued in its initial protest that GSA unreasonably evaluated BCD's quotation under the past performance factor. Protest at 18-22. We agree with CWT that these arguments were clearly meritorious and that the agency failed to take timely corrective action in response to them.

The solicitation instructed vendors to provide summaries of three relevant past performance projects for TMC services. RFQ at 101. The past performance factor stated that quotations would be evaluated based on "[t]he degree to which past performance evaluations for relevant effort" met the following criteria: (1) success in providing TMC services, (2) customer satisfaction and collaboration, and (3) achievement of small business participation goals for contracts that required them. *Id.* at 107-08. The RFQ provided for the assignment of adjectival ratings that considered both the relative relevance and quality of a vendor's past performance. As relevant here, a rating of outstanding required a record performing work of "essentially the same scope and magnitude of effort and complexities," and that "[p]erformance was rated exceptional in the majority of categories reviewed." *Id.* at 108. In contrast, a rating of good required a record performing work involving "similar scope and magnitude of effort and complexities" and that "[p]erformance was rated very good in the majority of categories reviewed." RFQ at 108.

CWT argued that BCD's past performance should have been rated as neutral, or no better than acceptable, because the awardee had not performed relevant contracts for the federal government. Protest at 18-22. The requester argued that the awardee's work as a contractor for commercial firms, rather than the federal government, did not satisfy the RFQ's requirement for relevant past performance. *Id.*

In response to the protest, the agency stated that “BCD supplied three references from corporate customers which demonstrated it had performed work involving essentially the same scope and magnitude of effort and complexities as required by the solicitation.” MOL at 13. The agency further stated that “[a]ll three references reported ratings of ‘Exceptional’ and ‘Very Good,’” and therefore argued that, “[b]ased on the evidence provided, GSA reasonably evaluated BCD’s past performance as ‘Outstanding,’ in compliance with the” RFQ. *Id.*

CWT’s comments and supplemental protest argued that GSA’s evaluation of BCD’s past performance was unreasonable because the performance ratings assigned by the awardee’s references were inconsistent with the RFQ’s definition of a rating of outstanding. Comments & Supp. Protest at 39. The agency acknowledges in response to the request that “CWT was correct in noting that a majority of BCD’s ratings were ‘Very Good,’ contrary to the requirement for a past performance evaluation of Outstanding under the RFQ,” which required that a majority of the ratings be exceptional. Resp. to Request at 12; RFQ at 108.

In its comments and supplemental protest, CWT also argued that the reference provided by one of BCD’s three customers, Apple, Inc., did not provide information necessary to determine the relevance of the work performed by the awardee. Comments & Supp. Protest at 32-39. In this regard, the reference stated that, due to the “secure and proprietary nature” of Apple’s travel program, the reference could not provide detailed information about the work performed by BCD. AR, Exh. 7, BCD Proposal at 14; see also Exh. 27, Prenegotiation Memorandum at 21;

The agency’s notice of corrective action stated that in light of CWT’s comments and supplemental protest, the agency would reevaluate the “ratings from BCD’s past performance references.” Notice of Corrective Action at 1. In response to this request, the agency contends that CWT is not entitled to costs because none of the arguments raised in the initial protest should have reasonably led the agency to identify the arguments raised in CWT’s comments and supplemental protest. Resp. to Request at 8-12. The agency maintains that it was CWT’s supplemental protest arguments--and not its initial protest arguments--that led to the corrective action.

We agree with CWT that a reasonable inquiry into its initial arguments concerning the assignment of an outstanding rating to BCD’s quotation under the past performance factor should have led the agency to identify the information highlighted in the requester’s supplemental arguments concerning the performance ratings assigned by the awardee’s references. The agency’s response to the protest specifically cited the ratings assigned by BCD’s references, including the number of very good and exceptional ratings. MOL at 13. The agency was aware, therefore, that the majority of

the ratings were very good--contrary to the RFQ's requirement for the assignment of a rating of outstanding.<sup>9</sup> See Resp. to Request at 12; RFQ at 108.

We also agree with the requester that a reasonable inquiry into its initial arguments concerning the relevance of the awardee's past performance--including the requester's assumption that the awardee's performance record was based on commercial contracts--should have led the agency to identify the issues raised in the requester's supplemental argument concerning the lack of information in the reference provided by Apple. The agency does not specifically dispute the requester's contention that the Apple reference lacked information necessary to determine its relevance. See Resp. to Request at 11-12. We think a reasonable investigation of the reference provided by Apple should have shown that the reference specifically declined to provide information necessary to determine the relevance of the work performed by the awardee.

On this record, we find that the initial protest arguments were clearly meritorious because a reasonable inquiry into these arguments would have identified the readily apparent issues with the agency's past performance evaluation. Because the agency did not take corrective action until CWT filed its comments and supplemental protest, we also find that the corrective action was unduly delayed. We therefore grant the request to recommend reimbursement of CWT's costs for pursuing this protest issue.

#### CONCLUSION AND RECOMMENDATION

In sum, we conclude that CWT's initial arguments regarding GSA's evaluation of BCD's quotation under the technical approach and past performance factors were clearly meritorious and that the agency unduly delayed taking prompt corrective action in response to them.<sup>10</sup> For these reasons, we recommend that GSA reimburse CWT's reasonable costs of filing and pursuing its protest with regard to its challenges under these evaluation factors. CWT should file its claim for costs, detailing and certifying the

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<sup>9</sup> The corrective action evaluation resulted in revision of the past performance rating for BCD's quotation from outstanding to good. *CW Gov't Travel, Inc.*, B-419193.4 *et al.*, *supra*, at 4.

<sup>10</sup> We have reviewed CWT's other arguments concerning the evaluation of BCD's quotation under the technical approach and past performance factors, and find that they are not clearly meritorious. However, because we find part of the requester's arguments under each of these factors was clearly meritorious and that the agency failed to take prompt corrective action, we recommend that the agency reimburse all of the requester's arguments regarding the evaluation of BCD's quotation under these factors. See *The Salvation Army Cmty. Corr. Program--Costs*, *supra*; *Sodexo Mgmt., Inc.--Costs*, *supra*.

time expended and costs incurred, with the agency within 60 days of this recommendation. 4 C.F.R. § 21.8(f)(1).

The request is granted.

Thomas H. Armstrong  
General Counsel