



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Bowhead Mission Solutions, LLC--Costs

File: B-419385.7

Date: July 14, 2022

Robert K. Tompkins, Esq., Hillary J. Freund, Esq., Kelsey M. Hayes, Esq., and Sean R. Belanger, Esq., Holland & Knight, LLP, for the protester.
Karen A. Janco, Esq., General Services Administration, for the agency.
David A. Edelstein, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request that GAO recommend reimbursement of protest costs is granted where challenge to unexplained differences between the initial evaluation and the reevaluation of the protester's proposal were clearly meritorious, and the agency unduly delayed taking corrective action.

DECISION

Bowhead Mission Solutions, LLC, a small business of Springfield, Virginia, requests that we recommend the firm be reimbursed the costs of pursuing its protest of the issuance of a task order to Manta Group, LLC, of Reston, Virginia, under request for proposals (RFP) No. ID03200029, issued by the General Services Administration (GSA) for global fielding services. Bowhead argues that its protest was clearly meritorious and that the agency unduly delayed taking corrective action.

We grant the request.

BACKGROUND

On September 9, 2020, the agency issued the RFP to Small Business Pool 1 holders of GSA's One Acquisition Solution for Integrated Services (OASIS) indefinite-delivery, indefinite-quantity contract, seeking global fielding services on behalf of the United States Army, Project Manager Mission Command. Agency Report (AR), Tab 1, RFP

at 1; Contracting Officer's Statement (COS) at 1.¹ The RFP contemplated award of a fixed-price, time-and-materials hybrid contract with a 12-month base period and four 12-month option periods. AR, Tab 2, RFP amend. 3 at 45.²

The RFP provided that award would be made on a best-value tradeoff basis considering price and four non-price factors: management approach, staffing, transition-in, and past performance.³ RFP amend. 3 at 17-21. With respect to each of these non-price factors, and on an overall basis, the agency assigned each proposal a rating indicating whether it "does not meet," "meets," or "exceeds" the requirements of the RFP's performance work statement (PWS). COS at 2.

GSA received six timely proposals, including proposals from Bowhead and Manta. COS at 1. The agency convened a technical evaluation panel (TEP) consisting of an acquisition project manager from GSA and three subject-matter experts from the Army activity on whose behalf GSA was conducting the procurement. AR, Tab 14, First TEP Report at 2. The TEP assigned Bowhead's proposal a rating of "meets" on the management approach, staffing, and past performance factors, a rating of "exceeds" on the transition-in factor, and an overall rating of "meets." *Id.* at 18-23.

On July 12, 2021, the agency made award to Manta Group. In explaining the basis for this award, the contracting officer adopted the TEP's ratings of Bowhead's proposal. AR, Tab 15, First Award Memorandum at 11-12. With respect to the management approach factor, the contracting officer found that Bowhead presented an overall efficient and effective management approach that satisfied the requirements of the PWS with "a low or moderate degree of risk." *Id.* With respect to the staffing factor, the contracting officer found that Bowhead proposed an effective approach to staffing requirements that satisfied the requirements of the PWS with a high probability of successful contract performance and a low degree of risk. *Id.* at 12. The contracting officer specifically stated that Bowhead's proposal warranted a rating of "meets" on both of these factors. *Id.* at 11-12.

The agency assessed Manta an overall rating of "exceeds." *Id.* at 12-13. Since Manta's technically superior proposal was also lower-priced, the contracting officer determined that Manta represented the best value to the government. *Id.* at 23.

On July 27, 2021, Bowhead protested the award to Manta with our Office. Protest, B-419385.3 at 1-35. Prior to the due date for the agency report, the agency advised

¹ Unless otherwise specified, citations to protest filings are to the underlying protest, B-419385.4, *et al.*

² The RFP was amended six times. Amendment 3 was the last amendment to make changes to the instructions or basis of award. Page citations to RFP amend. 3 are to the Adobe PDF page numbers in Tab 2 of the agency report.

³ The agency also evaluated offerors' facility security clearance on a "go/no-go" basis. RFP amend. 3 at 18.

that it intended to take corrective action by reevaluating Bowhead's proposal, reexamining the agency's best-value tradeoff analysis, and making a new source selection decision. Revised Corrective Action Notice, B-419385.3, at 1. Our Office determined that the corrective action rendered Bowhead's protest academic, and we dismissed the protest. *Bowhead Mission Solutions, LLC*, B-419385.3, Aug. 24, 2021 (unpublished decision).

After the dismissal of Bowhead's protest, the TEP reevaluated only Bowhead's proposal. AR, Tab 17, Second TEP Report at 1-12. As relevant here, the members of the TEP were unchanged between the initial evaluation and the reevaluation. *Compare* AR, Tab 14, First TEP Report at 2 *with* AR, Tab 17, Second TEP Report at 2.

On reevaluation, the TEP assessed Bowhead ratings of "does not meet" on the management approach and staffing factors, and an overall rating of "does not meet." *Id.* at 2-9. On November 10, the contracting officer again issued the task order to Manta. COS at 2; AR, Tab 5, Second Award Memorandum at 1-24. In documenting this decision, the contracting officer adopted and summarized the TEP's new findings. *Id.* With respect to the management approach factor, the contracting officer found that Bowhead "failed to present an efficient and effective approach for satisfying the requirements of the PWS." *Id.* at 11-12. Similarly, with respect to staffing, the contracting officer found that Bowhead "did not describe an effective approach to staffing requirements to satisfy the PWS requirements" and therefore carried "a low probability of successful contract performance with a moderate or high degree of risk." *Id.* at 12-13. The contracting officer wrote that Bowhead's proposal warranted a "does not meet" rating with respect to both of these factors. *Id.*

On November 10 the agency notified Bowhead of the second award to Manta. AR, Tab 6, Notice of Decision Statement, Nov. 10, 2021, at 1-11. Bowhead requested and received a debriefing, which concluded on November 23. COS at 2.

On November 24, 2021, Bowhead protested the second award to Manta with our Office. Protest at 1-21. On November 29, Bowhead filed a first supplemental protest, which expanded upon the initial protest filing. First Supp. Protest at 1-60. Bowhead alleged that the agency unreasonably evaluated Bowhead's technical proposal under the management approach and staffing factors and that the agency's reevaluation of Bowhead's proposal after corrective action was inconsistent with its initial evaluation. *Id.* at 17-18. In addition, the protester alleged that the agency unreasonably evaluated the awardee's proposal, that the agency treated Bowhead and the awardee unequally, that the agency failed to conduct a price analysis, and that the agency's best-value determination was unreasonable. *Id.*

On December 29, the agency filed its report responding to the protest and first supplemental protest. On January 10, Bowhead filed a second supplemental protest asserting that the agency improperly evaluated Manta's proposal on both the technical and price factors, disparately evaluated proposals, and conducted an inadequate price analysis. Second Supp. Protest at 1-38.

Our Office directed the agency to file its report on the second supplemental protest by Tuesday, January 18. GAO Notice to Parties, Jan. 7, 2022 at 1. On that date, GSA advised our Office that it intended to take corrective action by appointing a new TEP and contracting officer; reevaluating the proposals of the protester, awardee, and one other offeror; reexamining the best-value tradeoff; and issuing a new source selection decision. Notice of Corrective Action, Jan. 18, 2022, at 1. The agency subsequently advised our Office that it would maintain the suspension of contract performance during its corrective action. Revised Notice of Corrective Action, Jan. 20, 2022, at 1.

On January 25, our Office dismissed Bowhead's protest as academic. *Bowhead Mission Sols., LLC*, B-419385.4 *et al.*, Jan. 25, 2022 (unpublished decision). This request followed.

DISCUSSION

Bowhead requests that GAO recommend reimbursement of the reasonable costs of filing and pursuing its protest because the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Req. for Costs at 5-9. The agency counters that it promptly took corrective action prior to the deadline for filing the agency report on the second supplemental protest. Resp. to Req. for Costs at 16-17. In addition, the agency contends that Bowhead's initial and first supplemental protests were not clearly meritorious. *Id.* at 10-13.

Recommendation for Reimbursement of Costs

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, thereby causing the protester 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.

As a prerequisite to our recommending that costs be reimbursed where an agency takes corrective action in response to a protest, not only must the protest have been meritorious, but it also must have been clearly meritorious, *i.e.*, not a close question. *InfraMap Corp.--Costs*, B-405167.3, Mar. 26, 2012, 2012 CPD ¶ 123 at 3. A protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. *Procinctu Grp. Inc.--Costs*, B-416247.4, Sept. 21, 2018, 2019 CPD ¶ 36 at 4.

Once our Office determines that a protest is clearly meritorious, we consider corrective action to be prompt if it is taken before the due date for the agency report responding to the protest; we generally do not consider it to be prompt where it is taken after that date. *Alsalam Aircraft Co.--Costs*, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 at 3.

As explained below, we find that Bowhead raised clearly meritorious protest arguments relating to the evaluation of its proposal, and that the agency unduly delayed taking

corrective action in response to these protest arguments. We therefore recommend that Bowhead be reimbursed its costs.

Bowhead protested that the agency failed to explain the “drastic change” in its evaluation of Bowhead’s proposal between the first and second award decisions. Protest at 13-14; First Supp. Protest at 40-44. Bowhead asserts that this case is similar to our Office’s decision in *eAlliant, LLC*, B-407332.6, B-407332.10, Jan. 14, 2015, 2015 CPD ¶ 229. In *eAlliant*, our Office found that where an agency’s reevaluation of an offeror’s proposal results in significantly differing results as compared to the initial evaluation, despite the solicitation, proposal, and source selection authority (SSA) not having changed, it is incumbent on the SSA to seek some sort of explanation, or otherwise arrive at an understanding, of the difference between the evaluations. *Id.* at 11-12.

Bowhead contends that the fact pattern here falls squarely within our Office’s decision in *eAlliant*, and that there is no close question or defensible legal position that would preclude our recommending that the protester be reimbursed its costs. Req. for Costs at 5-6; Protester’s Reply Brief at 3-5. We agree.

The record here demonstrates that the agency reached diametrically opposed conclusions regarding its evaluation of Bowhead’s proposal in its July 2021 and November 2021 award decisions, without explaining the rationale for the different evaluations conclusions, despite the solicitation, proposal, and agency personnel remaining unchanged. In this respect, the agency did not issue any solicitation amendments or receive revised proposals between the issuance of the first and second award memoranda. See COS at 1-2. The same TEP performed the initial evaluation and reevaluation of Bowhead’s proposal. *Compare* AR, Tab 14, First TEP Report at 2 *with* AR, Tab 17, Second TEP Report at 2. And, the same contracting officer approved both the first and second award memoranda. *Compare* AR, Tab 15, First Award Memorandum at 24 *with* AR, Tab 5, Second Award Memorandum at 24.

These two award memoranda, however, express opposite conclusions regarding Bowhead’s proposal under the management approach and staffing factors; *i.e.*, first assigning Bowhead’s proposal a rating of “meets” under these factors and then assigning a rating of “does not meet.” *Compare*, AR, Tab 15, First Award Memorandum at 11 (“Bowhead’s [m]anagement [a]pproach is sufficient to satisfy the requirements of the PWS, thus warranting a ‘[m]eets’ rating”) *with* AR, Tab 5, Second Award Memorandum at 12 (“Bowhead’s [m]anagement [a]pproach failed to satisfy the requirements of the PWS, thus warranting a ‘[d]oes [n]ot [m]eet’ rating.”); *compare* AR, Tab 15, First Award Memorandum at 12 (“Bowhead’s [s]taffing [a]pproach is sufficient to satisfy the requirements of the PWS, thus warranting a ‘[m]eets’ rating.”) *with* AR, Tab 5, Second Award Memorandum at 12 (“Bowhead’s [s]taffing [a]pproach fails to satisfy the requirements of the PWS, thus warranting a ‘[d]oes [n]ot [m]eet’ rating.”).

Despite this difference between evaluation conclusions, nothing in the record suggests that the contracting officer sought an explanation of, or arrived at an understanding regarding, the basis for the significant rating differences. In fact, both the second TEP

report and the second award memorandum contain no acknowledgement that the agency had previously found Bowhead's proposal to meet the PWS requirements with respect to the management approach and staffing factors. See AR Tab 17, Second TEP Report at 3-9; AR, Tab 5, Second Award Memorandum at 11-13. Nor does either document explain why the agency subsequently reached the opposite conclusion. See *id.* On these facts, the merit of Bowhead's protest is clear: the agency was required to reconcile its starkly different conclusions, and it did not do so. See *eAlliant, supra* at 11-12.

The agency argues that Bowhead's protest presented a close call because the agency provided a reasonable explanation for the change in Bowhead's ratings. The agency contends that the second TEP report and second award memorandum, standing alone and without reference to the first evaluation, explain why Bowhead's proposal was found not to meet the requirements with respect to the management approach and staffing factors. Resp. to Req. for Costs at 11. The agency further contends that its rating changes were due to "finding issues that were not realized the first time around." COS at 19. We do not find the agency's arguments persuasive.

In this respect, the agency's second evaluation is similar to the reevaluation in *eAlliant*. There, a revised source selection evaluation board (SSEB) report removed six strengths that the agency had previously assessed in the protester's proposal. See *eAlliant, supra* at 5-6. The agency contended that the removal of these strengths justified the protester's new, lower ratings and that the agency reasonably removed these strengths because they were associated with an experience reference that the agency found to be not relevant. *Id.* at 8. We found this explanation unavailing because the same SSA had previously considered the relevance of the experience reference in question and found the protester's proposal to merit all six strengths even without the benefit of that reference. *Id.* at 8-9, 11. Accordingly, we sustained the protest because the record did not "provide [an] explanation as to why the evaluation results for [the protester] were materially different from those . . . reached in prior evaluations." *Id.* at 12.

Similarly, the contemporaneous record here shows that, in making the first award decision, the contracting officer considered the exact same issues that the agency now cites as the basis for Bowhead's "does not meet" ratings, and nevertheless concluded that Bowhead's proposal met the PWS requirements. For instance, the first TEP report discussed Bowhead's proposed management approach of [DELETED]. AR, Tab 14, First TEP Report at 17-18. The TEP concluded that this provided "no added benefit," but did not conclude that it detracted from Bowhead's overall effective management approach. AR, Tab 14, First TEP Report at 17-18. The contracting officer noted that this aspect of Bowhead's proposal was "redundant" and would raise management overhead costs, but still concluded that Bowhead's proposal warranted a rating of "meets" on the management approach factor. AR, Tab 15, First Award Memorandum at 11. On reevaluation, however, the TEP described this same management structure as an "inefficient approach" that "contradicted PWS requirements." AR, Tab 17, Second TEP Report at 2. This critique served as the basis for Bowhead's "does not meet" rating on the management approach factor in both the TEP report and the contracting officer's award memorandum. *Id.*; AR, Tab 5, Second Award Memorandum at 15.

Therefore, as in *eAlliant*, the record shows that the contracting officer previously considered the exact same issues identified in the protested award decision, but reached a significantly different conclusion. Absent some explanation for this change, the first award memorandum itself calls into question the reasonableness of the second, and we cannot conclude that the agency's award decision was reasonable. See *eAlliant, supra* at 11-12.⁴ See also, *CIGNA Government Servs., LLC*, B-401062.2, B 401062.3, May 6, 2009, 2010 CPD ¶ 283 at 13-14 (award decision that adopted different evaluation results of the same proposal without explanation for the differences could not be found to be reasonable).

Accordingly, we conclude that Bowhead's protest was clearly meritorious with respect to its argument that the agency evaluated Bowhead's proposal in a manner contrary to the agency's prior evaluation, without providing a reasonable explanation of the significant change in the evaluation. This argument was raised in Bowhead's initial and first supplemental protests. Protest at 13-14; First Supp. Protest at 41-44. The agency did not take corrective action until after it had filed the agency report on these protests. Accordingly, we find that the agency unduly delayed taking corrective action. *Alsalam Aircraft Co.--Costs*, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 at 3.

For these reasons, we recommend that Bowhead be reimbursed its reasonable costs of filing and pursuing its protest.

Severability

In response to an inquiry from our Office, the agency contends that Bowhead's recovery should be limited to its arguments regarding the agency's evaluation of Bowhead's proposal. Agency Resp. to GAO Request for Briefing, June 13, 2022, at 1. In this regard, the agency states that Bowhead's argument regarding the change in the agency's evaluation of its proposal "is independent from" its arguments regarding the

⁴ Where this protest differs from *eAlliant*, the differences bolster Bowhead's protest. In *eAlliant*, two different SSEBs evaluated the protester's proposal. *eAlliant, supra* at 12. Here, the exact same TEP produced two contradictory reports. *Compare* AR, Tab 14, First TEP Report at 2 *with* AR, Tab 17, Second TEP Report at 2. In *eAlliant*, the protester challenged evaluation changes that downgraded its ratings but still resulted in a finding that its proposal was "acceptable," *eAlliant, supra* at 6. Here, the agency concluded that Bowhead's proposal "d[id] not meet" the RFP's requirements after first reaching the opposite conclusion. *Compare*, AR, Tab 15, First Award Memorandum at 11-12 *with* AR, Tab 5, Second Award Memorandum at 11-13. In *eAlliant*, the agency's corrective action in response to a protest was to reevaluate all offerors. *eAlliant, supra* at 5-6. Here, the agency reevaluated only Bowhead. See, AR, Tab 17, Second TEP Report. These distinctions place even more importance on the SSA's obligation to explain the rationale for the change in the agency's evaluation of Bowhead's proposal.

evaluation of the awardee's proposal. *Id.* However, the agency's response provides no further explanation or argument in support of this contention.⁵ *Id.* at 1-15

For purposes of determining whether our Office should recommend that a protester be reimbursed its protest costs, we generally consider all issues concerning the evaluation of proposals to be intertwined--and thus not severable--and therefore generally will recommend reimbursement of the costs associated with both successful and unsuccessful challenges to an evaluation. *Coulson Aviation (USA) Inc.; 10 Tanker Air Carrier, LLC--Costs*, B-406920.6, B-406920.7, Aug. 22, 2013, 2013 CPD ¶ 197 at 5. We have, in appropriate cases, limited the award of protest costs to successful protesters where a part of their costs is allocable to a protest issue that is so clearly severable as to essentially constitute a separate protest. *See, e.g., BAE Tech. Servs., Inc.--Costs*, B-296699.3, Aug. 11, 2006, 2006 CPD ¶ 122 at 3; *Interface Flooring Sys., Inc.--Claim for Attorneys' Fees*, B-225439.5, July 29, 1987, 87-2 CPD ¶ 106 at 2-3. However, limiting recovery of protest costs in all cases to only those issues on which the protester prevailed would be inconsistent with the broad, remedial congressional purpose behind the cost reimbursement provisions of the Competition in Contracting Act. *TRESP Assocs., Inc.--Costs*, B-258322.8, Nov. 3, 1998, 98-2 CPD ¶ 108 at 2. *See* 31 U.S.C. § 3554(c)(1).

In this case, as noted above, the agency has presented no argument or evidence to support its contention that Bowhead's other challenges should be severed from its clearly meritorious challenge to the agency's changed evaluation of Bowhead's proposal. *See Fluor Energy Tech. Servs., LLC--Costs*, B-411466.3, June 7, 2016, 2016 CPD ¶ 160 at 3. Absent such support, we are unwilling to deviate from the general principle that we consider all issues concerning the evaluation of proposals to be intertwined and that a protester is entitled to all costs associated with both successful and unsuccessful allegations. *Id.*

RECOMMENDATION

We recommend that Bowhead be reimbursed its reasonable protest costs, including attorneys' fees, related to filing and pursuing its protest. Bowhead should submit its

⁵ In a supplemental briefing request, our Office asked the agency to address whether the protester's challenges to the evaluation of Manta Group's proposal were severable from the protester's challenges to the evaluation of Bowhead's proposal. The agency largely did not address this question, however, and instead argued extensively that Bowhead's arguments challenging the evaluation of the awardee's proposal raised in the second supplemental protest were severable from arguments challenging the evaluation of the awardee's proposal raised in the initial and first supplemental protests. *See* Agency Resp. to GAO Request for Briefing, June 13, 2022, at 3-15. We find this response to be not relevant to the issue before us, which is whether Bowhead's clearly meritorious challenge to the evaluation of its own proposal is severable from its challenges to the evaluation of the awardee's proposal.

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.

Edda Emmanuelli Perez
General Counsel