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## Decision

**Matter of:** Paragon Systems, Inc.--Costs

**File:** B-420362.7

**Date:** December 12, 2022

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Scott F. Lane, Esq., Katherine S. Nucci, Esq., and Jayna Marie Rust, Esq., Thompson Coburn LLP, for the protester.

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### DIGEST

Request that GAO recommend reimbursement of protest costs is granted where challenge to the agency's unequal evaluation of technical proposals was clearly meritorious, and the agency unduly delayed taking corrective action.

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### DECISION

Paragon Systems, Inc., of Herndon, Virginia, requests that our Office recommend the agency reimburse it for the reasonable costs of filing and pursuing a protest of the award of a contract to Centerra Group, LLC, of Herndon, Virginia, under request for proposals (RFP) No. 15M20021RA32CSO21, issued by the Department of Justice, United States Marshal Service (USMS), for non-commercial, armed security guard services, referred to as court security officers (CSO), for the 12th federal judicial Circuit. The requester contends that the agency failed to take prompt corrective action in response to clearly meritorious protest grounds.

We grant the request.

### BACKGROUND

The agency issued the RFP on July 7, 2021, for CSO services in the 1st, 3rd, 4th, 5th, 8th, and 12th federal judicial Circuits. The solicitation stated that the agency would make one award per circuit to the responsible offeror proposing the best value, "considering technical rating, past performance, and price for each Circuit." Agency

Report (AR), Tab 1, RFP at 184.<sup>1</sup> This request only concerns the award of a contract for CSO services for the 12th Circuit.

According to the solicitation, the technical evaluation would consist of an evaluation of each of the following technical factors: recruitment program and vetting applicants; medical qualification and review process; training and qualifications program; quality assurance/quality control plan; and phase in/phase out transition plan.<sup>2</sup> *Id.* at 185. The RFP provided that technical capability and past performance would be approximately equal in importance and, when combined, significantly more important than price. *Id.* at 183. The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity, time-and-materials contract for a 1-year base period and four 1-year options. *Id.* at 2.

The agency received and evaluated five proposals from offerors for the 12th Circuit, including Paragon and Centerra, and selected Centerra for award. Contracting Officer Statement/Memorandum of Law (COS/MOL) at 6. Paragon then protested the award to our Office on November 15. While the agency was preparing the agency report, it discovered that it had miscalculated price proposals for the 12th Circuit procurement. *Id.* at 13. In this regard, the agency's original 12th Circuit price evaluation mistakenly concluded that Paragon's price was higher than Centerra's price. *Id.* at 13-14. On December 14, the agency notified our Office that it would take corrective action with regard to the 12th Circuit procurement. Specifically, the agency stated that it would reevaluate the price proposals and make a new award decision based upon that reevaluation. *Id.* at 12-13; B-420362 Notice of Corrective Action (Dec. 14, 2021). On December 27, Paragon filed a supplemental protest challenging the agency's comparative analysis of proposals.

On January 11, 2022, Paragon withdrew its GAO protest in order to pursue a protest at the Court of Federal Claims.<sup>3</sup> That same day, the agency notified Paragon that it completed its corrective action concerning the 12th Circuit award and confirmed the contract award to Centerra. B-420362.3, AR, Tab 9, Notice of Award Letter. Specifically, the agency determined that while Paragon's price was slightly lower than Centerra's price, Centerra's proposal was substantially superior to Paragon's proposal with regard to technical considerations, and therefore, represented the best value to the agency. B-420362.3, AR, Tab 7, 12th Circuit -1st Corrective Action Price Negotiation Memorandum (PNM) at 4 and 2. The protester subsequently withdrew its pre-filing

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<sup>1</sup> Citations to the agency report are to the report produced in the underlying protest, docketed as B-420362.6, unless otherwise specified.

<sup>2</sup> The agency was to evaluate each technical factor and assign one of the following adjectival factors: exceptional, very good, satisfactory, marginal or unsatisfactory. AR, Tab 3, Technical Evaluation Board Final Report at 2.

<sup>3</sup> Our Office issued a Confirmation of Withdrawal on January 11, 2022, for B-420362 and B-420362.2.

notice of its intention to file at the Court of Federal Claims on January 13. COS/MOL at 13.

On January 18, Paragon filed another protest with our Office, this time contesting the agency's January 11 decision to make award to Centerra. In the protest, Paragon contended that the agency's evaluation was "overly reliant" on the adjectival ratings assigned to the proposals and failed to reasonably identify the benefits of Paragon's proposal compared to the benefits of Centerra's proposal. B-420362.3 Protest at 9. Paragon filed a supplemental protest on January 20, based on the agency's responses to Paragon's debriefing questions (B-420362.4), and a second supplemental protest on February 28, in response to the agency's report responding to the protest (B-420362.5).

In Paragon's second supplemental protest it argued that the agency disparately evaluated proposals under the quality assurance/quality control plan factor. Specifically, the protester argued that the agency treated Paragon unequally by assessing Centerra's proposal with a strength, but not Paragon's, for proposing a greater number of intermediate supervisors than was required by the RFP. B-420362.5 Comments & Supp. Protest at 6-7. The protester also argued that the agency irrationally relied upon Centerra's International Organization for Standardization (ISO) certifications as a discriminator in the tradeoff decision. *Id.* at 8. In this regard, the protester contended that the USMS unreasonably concluded that Centerra's ISO 9001 quality management system certification would ensure superior CSO services when compared to Paragon's "comprehensive, tailored [quality assurance/quality control] program with independent review and enforcement processes." *Id.* at 9.

After reviewing the second supplemental protest, the agency decided to take corrective action for a second time by conducting a new comparative analysis of the technical proposals of Paragon and Centerra, and making a new source selection decision. B-420362.3 *et al.*, Notice of Corrective Action (Mar. 3, 2022). GAO then dismissed the protest as academic on March 10. *Paragon Sys., Inc., B-420362.3 et al.*, Mar. 10, 2022 (unpublished decision).

The agency reevaluated proposals and again selected Centerra for award. The agency determined that Centerra's proposal had numerous specific strengths that benefitted the government, particularly with regard to the quality assurance/quality control plan factor. On May 16, Paragon timely protested the agency's award decision with our Office. Paragon again argued that the agency unreasonably and disparately evaluated the quality assurance/quality control plan factor by assessing Centerra's proposal with a strength for proposing more intermediate supervisors than required. B-420362.6 Protest at 11. In addition, the protester again argued that the agency unreasonably relied on Centerra's ISO 9001 certification as a discriminating feature under the quality assurance/quality control plan factor.<sup>4</sup> *Id.* at 12.

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<sup>4</sup> Paragon's protest raised three other protest grounds unrelated to the evaluation of the quality assurance/quality control plan factor, which were subsequently withdrawn by the protester in its comments. B-420362.6 Comments at 1 n.1.

The agency filed its report in response to this protest, including, for the first time, Centerra's proposal and relevant evaluation documents. In the agency report, the contracting officer determined that significant differences in the two offerors' proposals, especially under the quality assurance and quality control plan factor, warranted paying a price premium. The agency had reevaluated proposals as follows:

|   | Paragon       | Centerra      |
|---|---------------|---------------|
| <b>Recruitment and Vetting Applicants</b>       | Exceptional   | Exceptional   |
| <b>Medical Qualification and Review Process</b> | Very Good     | Very Good     |
| <b>Training and Qualifications Program</b>      | Exceptional   | Exceptional   |
| <b>Quality Assurance/Quality Control Plan</b>   | Very Good     | Exceptional   |
| <b>Phase In/Phase Out Transition Plan</b>       | Very Good     | Very Good     |
| <b>Total Evaluated Price</b>                    | \$183,895,587 | \$185,334,764 |

AR, Tab 10, 12th Circuit 2nd Corrective Action at 2-3.

On June 27, Paragon filed its comments, which, based on information gleaned from the agency's report, included additional assertions in support of its protest arguments. For example, in support of its contention that the agency had unfairly only assigned Centerra's proposal with a strength for having proposed more intermediate supervisors than required, the protester highlighted the fact that Paragon had in fact proposed [DELETED] percent more intermediate supervisors for the 12th judicial Circuit than Centerra.<sup>5</sup> B-420362.6 Paragon Comments at 1-2. On August 4, GAO requested that the agency respond to Paragon's comments, and, on August 8, the agency took corrective action for a third time. Electronic Protest Docketing System (Dkt.) No. 24, GAO Req. for Response to Protester's Comments; B-420362.6 Notice of Corrective Action (Aug. 8, 2022). The agency stated that it would reevaluate the technical proposals of Paragon and Centerra under the quality assurance/quality control plan factor and make a new comparative analysis, and a new source selection decision for the 12th Circuit. *Id.*

GAO again dismissed Paragon's protest as academic due to the agency's corrective action. *Paragon Sys., Inc.*, B-420362.6, Aug. 12, 2022 (unpublished decision). On August 16, this request followed.<sup>6</sup>

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<sup>5</sup> The record reflects that Centerra proposed [DELETED] intermediate supervisors for the 12th Circuit, while Paragon proposed [DELETED] intermediate supervisors. AR, Tab 15, Centerra's Technical Proposal at 28; AR, Tab 2, Paragon's Technical Proposal at 36.

<sup>6</sup> On November 21, Paragon filed a protest of the USMS's decision to again award the contract to Centerra, which our Office docketed as B-420362.8. That protest is still pending with our Office as of the date of this decision.

## DISCUSSION

Paragon requests that our Office recommend that it be reimbursed the costs associated with filing and pursuing its protest in the B-420362.6 proceeding. The protester contends that its protest grounds, challenging the strengths assessed for the number of intermediate supervisors proposed by Centerra and for the purported benefits of Centerra's ISO 9001 certification, were clearly meritorious. Req. for Entitlement at 5. Paragon argues that the agency unduly delayed taking corrective action on these protest grounds despite knowing, from an earlier protest (B-420362.5), that Paragon was challenging USMS's evaluation of the number of intermediate supervisors and the purported benefits of Centerra's ISO 9001 certification.

In this regard, the protester argues that the agency did not make a reasonable inquiry into the issues raised in its protest, and instead "doubled-down and essentially made up different--but factually unsupportable--reasons that Centerra's proposal was superior." *Id.* at 5. The protester contends that the agency's failure to launch a reasonable initial inquiry into the protest allegations forced Paragon to unnecessarily submit comments on the agency's report. Paragon asserts that it was only after our Office requested that the agency respond to Paragon's comments that the agency critically examined the issues raised, resulting in yet another corrective action.

The agency contends that Paragon's comments were in fact supplemental protest grounds based upon new information that Paragon received in the agency report, such as Centerra's technical proposal and the documentation related to the corrective action. Agency Response to Req. for Costs at 3. The agency argues in the alternative that even if its corrective action was determined to be unduly delayed, further development of the record, such as a supplemental agency report, was required before the issues Paragon raised could be considered clearly meritorious.<sup>7</sup> *Id.* at 4. The agency further asserts that to the extent there were errors in the agency evaluation, these alleged errors were not prejudicial to Paragon.

When a procuring agency takes corrective action in response to a protest, our Office may recommend the 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

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<sup>7</sup> The agency did not provide any further elaboration on this assertion.

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 Paragon raised a clearly meritorious issue with regard to the quality assurance/quality control plan factor. In addition, because Paragon raised this issue in its initial B-420362.6 protest filing and the agency took corrective action after the protester filed its comments, we find that the agency unduly delayed taking corrective action in response to this protest ground. We therefore recommend that Paragon be reimbursed its costs.

The record is clear that Paragon protested the agency's unequal evaluation of proposals under the quality assurance/quality control plan factor. Specifically, the protester argued that the agency had assessed Centerra's proposal with a strength for offering more than the minimum required number of intermediate supervisors, yet the agency did not similarly credit Paragon's proposal with a strength for also offering more than the minimum required number of intermediate supervisors. B-420362.6 Protest at 11. After receiving the agency report, Paragon was able for the first time to appreciate the magnitude of the error with the agency's evaluation. As noted above, the record revealed that Centerra had received a strength for having proposed [DELETED] intermediate supervisors for the 12th Circuit, while Paragon did not receive a strength even though it had proposed [DELETED] intermediate supervisors. AR Tab 15, Centerra's Technical Proposal at 28; AR, Tab 2, Paragon's Technical Proposal at 36.

Paragon contends that had the agency made a reasonable inquiry into its protest allegation, *i.e.*, compared the number of intermediate supervisors offered in the proposals of Paragon and Centerra, the agency would have realized that there was no defensible legal position for its disparate evaluation. Paragon's Response at 3. The agency's evaluation resulted in Centerra's proposal receiving a strength for proposing more intermediate supervisors than the RFP required, and Paragon's proposal not receiving a similar strength, despite proposing an even greater number of intermediate supervisors.

We agree with the protester that no further development was required to determine the clear merit of Paragon's challenge to the unequal evaluation.<sup>8</sup> The only documents

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<sup>8</sup> We do not find that the issue of the purported benefits of Centerra's ISO 9001 certification was clearly meritorious because this issue would have required further development to resolve. Nevertheless, because, as discussed, the agency failed to take prompt corrective action in response to a different protest allegation that was in fact clearly meritorious, we have a basis to recommend that the agency pay Paragon its reasonable protest costs. Moreover, as a general rule, we consider a successful

necessary to conclusively resolve this issue, the proposals of Centerra and Paragon and the agency's evaluation of proposals under the quality assurance/quality control plan factor, were part of the evaluation record that the agency provided in response to this protest ground. These documents unambiguously show that the agency miscalculated the number of intermediate supervisors proposed by Paragon and Centerra. See AR, Tab 9, Comparative Analysis at 8 (stating that both Paragon and Centerra proposed [DELETED]). A supplemental agency report would have added no further relevant documents to the record other than the argument of counsel.

We also disagree with the agency's contention that any errors in its evaluation and comparison of proposals were not prejudicial. In this regard, we note that Centerra's ostensible superiority under the quality assurance/quality control plan factor was considered a discriminator in the agency's tradeoff decision since the two offerors were found to be close in merit under the other non-price factors. See AR, Tab 10, PNM at 5-6.

In sum, we find that the agency failed to conduct a reasonably inquiry into its evaluation of both offerors' proposed number of intermediate supervisors. Had the agency meaningfully reviewed the proposals of Centerra and Paragon concerning this issue it would have discovered the errors noted above. In this context, discovery of the errors may have changed the ratings assigned to the offerors' proposals for this factor as well as changed the agency's reliance on this discriminator in its best-value determination. Accordingly, we conclude that the agency unduly delayed taking corrective action in response to a clearly meritorious protest ground.

## RECOMMENDATION

In light of the foregoing, we recommend that the agency reimburse Paragon the costs, including reasonable attorneys' fees, associated with filing and pursuing its B-420362.6

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protester entitled to costs incurred with respect to all issues pursued, not merely those upon which it prevails. In our view, 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. *AAR Aircraft Servs.--Costs*, B 291670.6, May 12, 2003, 2003 CPD ¶ 100 at 9.

protest to our Office. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The request is granted.

Edda Emmanuelli Perez  
General Counsel