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Decision

Matter of: RemedyBiz, Inc.

File: B-421196

Date: January 17, 2023

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DIGEST

1. Protests challenging agency's oral presentation, key personnel, and technical evaluations are denied where protester has not demonstrated that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation.
 2. Protest challenging the agency's evaluation of prior experience is sustained where the agency failed to adequately document the evaluation, and the error was prejudicial to the protester.
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DECISION

RemedyBiz Inc., a small business of Reston, Virginia, protests the establishment of a blanket purchase agreement (BPA) with, and issuance of a task order to, Centennial Technologies Inc., a small business of Leesburg, Virginia, under Department of Education request for quotations (RFQ) No. 91990022Q0066, for the implementation of a new acquisition management system. RemedyBiz alleges that the agency's evaluation of quotations and award decision were improper.

We sustain the protest.

BACKGROUND

The solicitation, set aside for small-businesses, was issued on July 18, 2022, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 utilizing the General

Services Administration's Federal Supply Schedule (FSS). Agency Report (AR), Tab C, RFQ at 1, 3.¹ The RFQ sought quotations to implement "a modern Acquisition Management System (AMS) that creates a secure business environment and facilitates and supports cost-effective acquisition of goods and services" in support of the agency's mission. *Id.* at 20. The solicitation contemplated the establishment of a BPA under which the agency will place fixed-price, time-and-materials, or hybrid, "calls" for task orders--for a 12-month base period and four 12-month options--in conjunction with the issuance of the first task order. *Id.* at 4-5. The RFQ included a statement of objectives for the first task order that "focuses primarily on the implementation of the AMS solution and relevant support activities," specifically the planning phase work. *Id.* at 41-42.

The solicitation set forth a three-phase, best-value tradeoff source selection process, considering the following evaluation factors, listed in descending order of importance: (1) demonstrated prior experience (prior experience); (2) oral presentation and slide deck (oral presentation); (3) capability of proposed key personnel (key personnel); (4) technical submission (technical); and (5) business submission and price workbook (price). *Id.* at 78-81. When combined, the non-price factors were significantly more important than price. *Id.* at 78.

In phase 1, the agency would evaluate only prior experience. *Id.* at 67-68. After the phase 1 evaluation, the agency would issue an advisory notification to each vendor, identifying the vendors that were "rated most highly and advised to proceed" to the next phase (phase 2), oral presentations and submission of key personnel resumes.² *Id.* at 68-72. After the phase 2 evaluation, the agency would issue another notification, advising vendors whether they should proceed to phase 3, the submission of quotations for evaluation under the technical and price factors. *Id.* at 72-75.

The RFQ advised that, for each non-price factor, the agency would evaluate "holistically" to assign a rating of "high confidence," "some confidence," or "low confidence." *Id.* at 79. For price, vendors were instructed to submit labor categories and labor rates as well as a fixed price for the first task order. *Id.* at 74. For the BPA, the agency would evaluate price quotations to determine whether labor rates, labor categories, and labor mix were fair and reasonable. *Id.* at 81. With regard to the first task order, "total evaluated price" would be evaluated for reasonableness. *Id.* In addition, the agency would evaluate "the alignment of the proposed pricing for BPA Task Order [No.]1 to the [vendor's] proposed technical and management approach in accordance with FAR 8.4." *Id.*

¹ All citations to the record refer to the documents' Adobe PDF pagination.

² The agency refers to this process as an "advisory down-select." RFQ at 72. Vendors that were not rated most highly would be advised that "they are unlikely to be viable competitors, along with the general basis for the Department's advisory recommendation." *Id.* The advisement was a recommendation only, and vendors were permitted to choose whether to proceed to the next phase of the evaluation, regardless of the nature of the agency's advisory notice.

Twelve vendors submitted phase 1 quotations. Contracting Officer's Statement (COS) at 7-8. The agency advised three vendors, including RemedyBiz and Centennial Technologies, to proceed to phase 2 and phase 3. *Id.* The table below summarizes the agency's evaluation of RemedyBiz's and Centennial Technologies's quotations for all three phases:

	RemedyBiz	Centennial Technologies
PRIOR EXPERIENCE	Some Confidence	High Confidence
ORAL PRESENTATION	Some Confidence	High Confidence
KEY PERSONNEL	Some Confidence	High Confidence
TECHNICAL	High Confidence	High Confidence
PRICE	\$19,761,453	\$18,631,479

Id. at 9; AR, Tab E, Prior Experience Evaluation; AR, Tab H, Centennial Technologies Phase 2 Evaluation; AR, Tab I, RemedyBiz Phase 2 Evaluation; AR, Tab J, RemedyBiz Phase 3 Evaluation.

According to the contracting officer, “[b]ecause Centennial Technologies received the highest confidence rating over all three phases and they had the lowest quoted price for BPA Call Order [No.] 01, a best value tradeoff analysis was not required to be performed.” COS at 9. The agency therefore established the BPA with Centennial Technologies and issued the first call order on September 30. *Id.* This protest followed.

DISCUSSION

RemedyBiz challenges the evaluation of its quotation and Centennial Technologies's quotation under each of the four non-price factors, as well as objecting to the resulting award decision. As discussed below, we find reasonable the agency's evaluation of quotations under the oral presentation, key personnel, and technical evaluation factors. We sustain, however, RemedyBiz's protest challenging the evaluation of quotations under the prior experience factor because the record is insufficient to support the reasonableness of the agency's conclusions. While we do not address every issue raised, we have considered all of the protester's arguments and conclude that only the issues discussed below furnish a basis on which to sustain the protest.

Oral Presentation and Key Personnel Factors

RemedyBiz challenges the agency's assessment of RemedyBiz's and Centennial Technologies's quotations under the oral presentation and key personnel evaluation factors. Protest at 13-16; Comments at 7-10. The agency assigned a rating of “some confidence” to RemedyBiz and “high confidence” to Centennial Technologies under both factors, identifying elements of each vendor's approach that raised and lowered “expectation of success” in bulleted lists. AR, Tab I, RemedyBiz Phase 2 Evaluation.

RemedyBiz asserts that the agency relied on unstated evaluation criteria to distinguish between quotations. Protest at 13-16; Comments at 7-10. According to RemedyBiz, the agency would have deemed RemedyBiz's quotation superior to Centennial Technologies's under both evaluation factors had it evaluated quotations according to the solicitation. Protest at 13-16; Comments at 7-10. The agency responds that its evaluation was reasonable and consistent with the RFQ. Memorandum of Law (MOL) at 6-9.

Where, as here, an agency issues an RFQ to FSS contract holders pursuant to FAR subpart 8.4 and conducts a competition for the establishment of a BPA or issuance of an order, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Quotient, Inc.*, B-416473.6, B-416473.7, July 30, 2019, 2019 CPD ¶ 281 at 5. Where a protester challenges the evaluation as unfairly utilizing unstated evaluation criteria, our Office will assess whether the solicitation reasonably informs vendors of the basis for the evaluation. *Raytheon Co.*, B-403110.3, Apr. 26, 2011, 2011 CPD ¶ 96 at 5. In that regard, agencies are not required to list, as stated evaluation criteria, every area that may be taken into account; rather, it is sufficient that the areas considered in the evaluation be reasonably related to or encompassed by the stated criteria. *Id.* A protester's disagreement with an agency's evaluation judgments, without more, does not establish that an evaluation was unreasonable. *Electrosoft Servs., Inc.*, B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5.

Under the RFQ, phase 2 involved the evaluation of the oral presentation and key personnel factors. RFQ at 69-72. According to the RFQ's instructions, the purpose of the oral presentations was for the agency to "understand" vendors' technical and management approaches for implementing the AMS "directly from the" vendor. The RFQ limited presentation teams "to five (5) employees of the team" and specified that "[a]t least three (3) of the five (5) team members must be the Prime Contractor's key personnel." *Id.* at 70. The solicitation also outlined the structure that the oral presentation should follow: introduction (5 minutes); technical approach (15 minutes); implementation approach (15 minutes); and change management approach (10 minutes). *Id.* at 69-70. The agency would then conduct a 15-minute question-and-answer (Q&A) session to conclude the oral presentation. *Id.* at 69.

The RFQ identified five key personnel: program manager, development lead, senior architect, data conversion lead, and testing lead. RFQ at 72. The agency required vendors to identify whether the individual proposed for a key personnel position was an existing employee of the proposed prime contractor or major subcontractor, and mandated that three of the key personnel "must be employees" of the proposed prime contractor. *Id.* at 71. If not proposing an existing employee, the vendor was required to submit "a Tentative/Contingent Offer letter" documenting "that the proposed key person[] has accepted the proposed position if an award is received." *Id.*

The protester challenges the evaluation under the oral presentation factor, contending that the agency was not permitted to criticize RemedyBiz and praise Centennial Technologies based on who participated in the oral presentations. Comments at 7-9. In this regard, the evaluators noted one of the aspects that “lowers expectation of success” for RemedyBiz was that the firm’s program manager was the only individual who presented, with no other key personnel speaking. AR, Tab I, RemedyBiz Phase 2 Evaluation. The agency also observed that during the Q&A session, “another executive participated but will not be part of the delivery team.” *Id.* For the awardee, by contrast, the agency had higher expectations of success because, among other things, Centennial Technologies’s key personnel participated in the presentation and “appeared knowledgeable and confident.” AR, Tab H, Centennial Technologies Phase 2 Evaluation.

According to the protester, these evaluation findings represent the application of unstated evaluation criteria for “which or how many Key Personnel spoke during the oral presentation.” Comments at 7-9. With respect to the oral presentations, however, the RFQ explicitly notified vendors that the purpose of the oral presentations was for the agency to “understand” vendors’ technical and management approaches for implementing the AMS “directly from the” vendor, and explicitly required that the vendor bring three key personnel to the presentation. RFQ at 70. In this context, we find that the RFQ adequately informed vendors that the agency would evaluate whether and how well the key personnel delivered the oral presentation. *See Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 6.

The protester also challenges the agency’s assessment of a “lowers expectation of success” finding because one of RemedyBiz’s proposed key personnel--the development lead--was listed as “contingent.” Comments at 9. According to RemedyBiz, it was improper for the agency to identify this as an issue because RemedyBiz met the solicitation’s requirements for a contingent hire for a key personnel, *i.e.*, including a tentative/contingent offer letter. Protest at 16.

The agency responds that it was reasonable for the evaluators to identify a contingent hire for a key personnel position as a risk even if the vendor submitted a tentative/contingent offer letter. MOL at 9. We agree. It is not apparent from our review of the solicitation why the risk of the availability of key personnel cannot reasonably be considered as part of the evaluation of the key personnel factor. Indeed, as the protester itself acknowledges, the RFQ contained many requirements regarding the employment status of key personnel. Protest at 16. These requirements only underscore the agency’s concern about the risk posed by a contingent hire. *See McKean Def. Grp., LLC*, B-415254.2. Dec. 19, 2017, 2017 CPD ¶ 389 at 8-9 (denying protest challenging weakness assigned for proposing contingent hires for key personnel positions). We therefore find no basis to sustain the protester’s complaint that the agency identified a risk associated with proposing a contingent hire in the development lead key personnel role.

Technical Factor

As part of its protest, RemedyBiz alleges that, under the technical evaluation factor, the agency unreasonably criticized RemedyBiz's approach to license management as "very generic" and unjustifiably questioned whether RemedyBiz's quotation had demonstrated RemedyBiz had a particular type of experience in converting attachments. Protest at 16; Comments at 10-11. The agency defends its evaluation and responds that, even assuming the evaluation was flawed in this regard, RemedyBiz did not suffer any competitive prejudice because the firm was evaluated favorably and assigned an adjectival rating of "high confidence." MOL at 10-11. We agree.

Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *GeoSystems Analysis, Inc.*, B-413016, July 25, 2016, 2016 CPD ¶ 190 at 6. In this respect, we find that RemedyBiz has not established that it suffered any competitive prejudice from the alleged error in the evaluation of its quotation under the technical factor.

Even assuming that the allegations have merit, the record shows that the agency assigned RemedyBiz's quotation the same adjectival rating as the awardee--the highest possible adjectival rating under this factor--noting a dozen positive elements about the protester's quotation. AR, Tab J, RemedyBiz Phase 3 Evaluation. Because the agency determined it had high confidence in RemedyBiz's understanding, approach, and likelihood of success under this evaluation factor, we see no reasonable possibility that minor improvements to the agency's assessment of the depth of detail of RemedyBiz's quotation would have significantly improved the firm's chances of being selected for award. See *Citizant, Inc.; Steampunk, Inc.*, B-420660 *et al.*, July 13, 2022, 2022 CPD ¶ 181 at 19 (denying protest of evaluation when protester received highest possible rating). We therefore deny this challenge for want of competitive prejudice.

Prior Experience Factor

RemedyBiz also protests the evaluation of quotations under the prior experience evaluation factor. Under this factor, the RFQ required the vendor to "be certified at Capability Maturity Model Integration (CMMI)" development level 3, and to submit three recent examples of relevant work "highlighting their experience in delivering and/or developing successful modernization solutions," one of which "must be related to end-to-end federal Acquisition Management System [AMS] implementation."³ RFQ at 67. In

³ CMMI was developed by the Carnegie-Mellon Software Engineering Institute and is a process improvement approach that provides organizations with the essential elements of effective processes. *Insight Tech. Sols., Inc.*, B-420543; B-420543.2, May 27, 2022, 2022 CPD ¶ 134 at 2 n.4.

addition, vendors were to provide information about their implementation method and experience with implementing “a hybrid modernized solution where a low-cost/no-code or similar platform is used to enhance the user experience of a COTS (Commercial-off-the-Shelf)[⁴] product by building extensions.” *Id.* at 68. The agency assigned a rating of “high confidence” to Centennial Technologies’s quotation and a rating of “some confidence” to RemedyBiz’s quotation. AR, Tab E, Prior Experience Evaluation.

The protester argues that the agency has not justified its evaluation findings in the contemporaneous record or in its response to the protest, and that “[b]ased upon RemedyBiz’s significantly more substantial experience and the complexity of that experience, it was entitled to a higher rating than [Centennial Technologies].” Comments at 8. The agency asserts that it reasonably distinguished between the vendors based on “the descriptions of direct experience provided by the offerors.” MOL at 5-6.

In resolving a protest, we do not reevaluate quotations, but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. *Ohio KePRO, Inc.*, B-417836, B-417836.2, Nov. 18, 2019, 2020 CPD ¶ 47 at 4; *Smartronix, Inc.*; *ManTech Advanced Sys. Int’l, Inc.*, B-411970 *et al.*, Nov. 25, 2015, 2015 CPD ¶ 373 at 5. In order for us to review an agency’s evaluation judgment, an agency must have adequate documentation to support its judgment. *Ohio KePRO, Inc.*, *supra* at 6; *Technology Concepts & Design, Inc.*, B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 8-9. Where an agency fails to document its evaluation, it then bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. *Ohio KePRO, Inc.*, *supra* at 6-7; *see also Systems Rsch. &*

⁴ The FAR defines COTS as:

- (1) . . . any item of supply (including construction material) that is—
 - (i) A commercial product . . . ;
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

FAR 2.101.

Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 12.

Here, the only contemporaneous record of the agency’s prior experience evaluation is a chart of the vendors. AR, Tab E, Prior Experience Evaluation. The chart included columns with questions and yes/no or other short responses, reflecting the following:

	RemedyBiz	Centennial Technologies
CMMI development level 3 certified?	Yes	Yes
Submitted 3 recent examples?	Yes	Yes
Project 1 - total contract value greater than \$5 million?	Yes	Yes
Project 2 - total contract value greater than \$5 million?	Yes	Yes
Project 3 - total contract value greater than \$5 million?	Yes	Yes
Identified a project for end-to-end federal Acquisition Management System implementation?	Project 1	Project 1
“Submitted info” on implementation methodology and hybrid implementation?	Yes	Yes

Id. Finally, the chart included a column for notes by the evaluation team. *Id.* There are no notes for the evaluation of Centennial Technologies’s prior experience. *Id.* For RemedyBiz, the agency included the following annotation:

For the NIH [National Institutes of Health] contract referenced, as per the “Contract Effort Description,” the project is for the O&M [operations and maintenance] of various systems that includes ITSM [Information Technology Service Management], etc. In CY [calendar year] 21 and CY22, RemedyBiz did PRISM upgrade, but not new implementation mentioned.[⁵]

Id.

In response to the protest, the agency argues that its evaluation conclusions were justified because RemedyBiz provided only one example of an “end-to-end federal AMS implementation” for the Department of Energy. MOL at 5-6. Referring to the annotation about RemedyBiz’s NIH contract quoted above, the agency asserts neither the NIH example nor the third example identified in RemedyBiz’s quotation was for end-to-end

⁵ PRISM is a COTS offering for AMS. PRISM, <https://www.unisonglobal.com/product-suites/acquisition/prism> (last visited Jan. 9, 2023).

AMS implementation. *Id.* By contrast, Centennial Technologies “demonstrated multiple instances of new AMS implementation in their contracts with the Indian Health Service, the Department of the Interior and the Environmental Protection Agency.” *Id.*

In reviewing an agency’s procurement actions, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties’ arguments, explanations, and any hearing testimony. *AllWorld Language Consultants, Inc.*, B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 4 n.3. Our Office will accord lesser weight to *post hoc* arguments or analyses because judgments made “in the heat of an adversarial process” may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. While we accord greater weight to contemporaneous materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. *NWT, Inc.; PharmChem Labs., Inc.*, B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16 (citing *Quality Elevator Co., Inc.*, B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 3-4).

Here, the agency’s one identified basis for the distinction between the evaluation of RemedyBiz and Centennial Technologies--that the awardee had more experience with “end-to-end federal AMS implementation”--is not found in the contemporaneous evaluation record, but rather, only in the post-protest arguments advanced by counsel for the agency. See MOL at 6. Counsel’s *post hoc* justification, however, does not “simply fill in previously unrecorded details” but instead, inserts conclusions that are not manifested anywhere in the evaluation record or the source selection decision. Moreover, our review of the record confirms the protester’s contention that Centennial Technologies’s quotation does not specifically represent that all three of its projects are end-to-end federal AMS implementation. See Comments at 5-6. Nor, for that matter, did Centennial Technologies assert the same in its comments on the agency report. See Intervenor’s Comments at 1-3 (discussing prior experience). As such, we find this argument--proffered in response to the protest, with no support in the contemporaneous record, to be a *post-hoc* rationalization deserving of little weight. See *Microsoft Corp.*, B-420004, B-420004.2, Oct. 29, 2021, 2022 CPD ¶ 155 at 15; *Boeing Sikorsky, supra* at 15.

The contemporaneous record here reveals no difference between the agency’s evaluation of Centennial Technologies and RemedyBiz--both are credited with meeting the solicitation’s requirements (*i.e.*, providing three examples of recent and relevant experience) including submitting one example involving “end-to-end federal AMS implementation.” AR, Tab E, Prior Experience Evaluation. The agency, however, assigned a higher rating to Centennial Technologies (“high confidence”) than RemedyBiz (“some confidence”). *Id.* In short, the contemporaneous record of the

agency's evaluation reflects no basis for the agency's unequal evaluation of the vendors.

We also find the error here to be prejudicial to the protester. As discussed above, competitive prejudice is an essential element of a viable protest. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if defects in the procurement were found. *Millennium Eng'g & Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 9. We, however, resolve any doubts regarding prejudice in favor of a protester since only a reasonable possibility of prejudice is required. *Celta Servs., Inc.*, B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 12.

Here, the agency did not document its source selection decision, *i.e.*, create an award decision document. Instead, based on the evaluations of the non-price factors and price, the contracting officer asserts that because "Centennial Technologies received the highest confidence rating over all three phases and [it] had the lowest quoted price for BPA Call Order [No.] 01, a best value tradeoff analysis was not required to be performed." COS at 9. The agency subsequently established the BPA with Centennial Technologies and issued the first call order on September 30. *Id.*

In short, the agency's award decision relied upon the assigned adjectival ratings. In these circumstances, we find that RemedyBiz was prejudiced by the agency's assignment of the unsupported adjectival ratings for both firms under prior experience, the most important evaluation factor, even though we find no prejudicial error in the agency's evaluation under the other non-price factors. See *AT&T Gov't Sols., Inc.*, B-413012, B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 21, 28 (finding that the errors in the assignment of adjectival ratings to be prejudicial where the source selection authority relied upon those errors in the award decision); *contra ICI Servs. Corp.*, B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 13-14 (finding protester's challenge to the assigned adjectival evaluation rating to be without prejudice where the subsequent award decision was not based on the offerors' assigned ratings but on the underlying evaluation findings).

In addition, we cannot conclude that the agency's award determination, which was premised on the agency's evaluation under prior experience, was reasonable. *Celta Servs., Inc.*, B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 11. We therefore sustain RemedyBiz's protest argument that the agency's award decision was flawed because it was based on a flawed underlying evaluation. See Comments at 11-12.

RECOMMENDATION

We conclude that the record of the agency's evaluation of quotations under the prior experience factor does not provide our Office with information sufficient to review the reasonableness of the agency's findings and the resulting award decision, and we sustain the protest on that basis. We recommend that the agency reevaluate quotations consistent with this decision, and, based on that evaluation, make a new source

selection determination, ensuring both are adequately documented. If Centennial Technologies's quotation is not found to represent the best value to the government based on that reevaluation and new source selection determination, the agency should cancel the existing BPA and task order and establish a BPA and issue a new task order with the vendor whose quotation is determined to represent the best value. We also recommend that RemedyBiz be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). RemedyBiz 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 protest is sustained.

Edda Emmanuelli Perez
General Counsel