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Decision

Matter of: Persistent Technology, Inc.--Costs

File: B-420960.6

Date: May 7, 2024

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DIGEST

1. Request for recommendation that protest costs be reimbursed is granted where the record establishes that the agency unduly delayed taking corrective action in the face of clearly meritorious protest grounds challenging the agency's unreasonable technical and past performance evaluations and best-value tradeoff determination.

2. Request for recommendation that protest costs be reimbursed is denied where the protest ground challenging the agency's disclosure of pricing information is not clearly meritorious and severable from the clearly meritorious grounds.

DECISION

Persistent Technology, Inc. (PTI), a service-disabled veteran-owned small business (SDVOSB), of Alexandria, Virginia, requests that our Office recommend that the Department of Labor (DOL) reimburse it for the reasonable costs of pursuing its protest of the issuance of a task order to Addx Corporation, an SDVOSB, of Alexandria, Virginia, under request for quotations (RFQ) No. 1605TA-22-Q-00044. The task order was for services to support the operations and maintenance of the Occupational Safety and Health Administration's (OSHA) information system (OIS). PTI argues that it should be reimbursed its protest costs because the agency unduly delayed taking corrective action in response to its clearly meritorious protest.

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

BACKGROUND

The RFQ, set aside for SDVOSBs, was issued in accordance with Federal Acquisition Regulation (FAR) subpart 8.4 to holders of a General Services Administration multiple-award contract, special item number 54151S--Information Technology IT Professional Services.¹ Agency Report (AR), Tab 1a, RFQ at 2.² The RFQ contemplated the issuance of a single hybrid task order with a fixed-price contract line item number (CLIN) for operations support and helpdesk services and a time-and-materials CLIN for maintenance, development, modernization, and enhancements. *Id.* at 10. The task order's period of performance would be a base year with four 1-year options. *Id.* at 8.

The task order would be issued to the vendor whose quotation represented the best value to the agency, considering three factors: technical approach, past performance, and price. *Id.* at 86. The technical approach factor was significantly more important than the past performance factor; the non-price factors, when combined, were significantly more important than price. *Id.* The technical approach factor contained four subfactors of equal importance: (1) understanding of the requirement; (2) management approach; (3) key personnel; and (4) transition-in plan. *Id.* Only quotations evaluated as at least acceptable under the technical approach factor and each of its four subfactors would be eligible for award.³ *Id.*

The agency received four quotations, including those from Addx and PTI. AR, Tab 11, SSD at 4. After conducting exchanges with the vendors, DOL issued the task order to PTI. *Id.* Another vendor filed a protest of the award decision with our Office and we dismissed the protest after the agency announced its intent to take corrective action. *Id.*

As part of the agency's corrective action, DOL issued a revised RFQ that changed the type of contract from fixed-price to labor-hours for certain CLINs. AR, Tab 11, SSD at 4; Contracting Officer's Statement (COS) at 2-3; see also AR, Tab 5, RFQ amend. 4 at 5,

¹ Although the solicitation was issued as an RFQ, throughout the record the parties use the terms vendors and quotations, and offerors and proposals interchangeably. Because the distinction between a quotation and a proposal has no bearing on our analysis, the decision refers to the submission of quotations by vendors for consistency.

² References herein to the agency report are to the report provided in response to PTI's prior protest, which was docketed by our Office as B-420960.3, B-420960.5. Citations to the record use the Adobe PDF pagination of documents produced in the agency report. Furthermore, the RFQ was amended four times and all references to the RFQ are to the final conformed version in amendment 4, unless otherwise noted.

³ A quotation is rated acceptable "that satisfies all the [g]overnment's requirements with minimal detail to indicate feasibility of the approach and shows a minimal understanding of the problems, with an overall moderate to high degree of risk in meeting the [g]overnment's requirements." AR, Tab 11, Source Selection Document (SSD) at 5.

84. DOL also revised the subfactors under the technical approach factor and adjusted their weights. For the revised RFQ, the technical approach subfactors were: (1) understanding the requirement; (2) staffing plan and key personnel; (3) quality control plan; and (4) transition-in plan. RFQ amend. 4 at 84. The subfactors for understanding the requirement, and staffing plan and key personnel were of equal importance and were significantly more important than the subfactors for the quality control plan and the transition-in plan. *Id.* The other evaluation factors and their importance were unchanged.

DOL received revised quotations from multiple vendors, including Addx and PTI. AR, Tab 11, SSD at 4. The table below summarizes the agency's evaluation of PTI and Addx:

FACTORS	PTI	ADDX
TECHNICAL OVERALL	Acceptable	Good
Understanding the Requirement	Marginal	Good
Staffing Plan & Key Personnel	Acceptable	Good
Quality Control Plan	Acceptable	Good
Transition-In Plan	Acceptable	Acceptable
PAST PERFORMANCE	Very Good	Very Good
PRICE	\$38,779,119	\$35,997,574

Id. at 10; AR, Tab 15, Technical Evaluation at 4. In the evaluation, the contracting officer, who was the source selection authority, noted that even though PTI received a rating of acceptable for the overall technical factor, PTI was ineligible for award because it received a rating of marginal for the understanding the requirement subfactor. AR, Tab 11, SSD at 10.

Notwithstanding PTI's ineligibility, the contracting officer considered whether PTI's quotation would represent the best value if its rating of marginal under the understanding the requirement subfactor was upgraded to acceptable. *Id.* at 11. The contracting officer compared the relative strengths of PTI's and Addx's quotations under the four technical subfactors and concluded that Addx's quotation was technically superior to PTI's. *Id.* at 11-12. The contracting officer also found that both Addx and PTI were rated very good for past performance so that past performance was not a discriminator. *Id.* at 12. The contracting officer noted that Addx's quotation was lower-priced than PTI's and stated "no tradeoff is required." *Id.* DOL concluded that Addx's quotation represented the best value to the government. *Id.* at 13-14.

On April 18, 2023, the agency notified PTI that its quotation had not been selected for award and that the task order had been issued to Addx. AR, Tab 13, Unsuccessful Vendor Letter at 1. PTI and another vendor, 2TechJV, LLC, each filed separate protests with our Office. See *2TechJV, LLC*, B-420960.4, July 25, 2023 (unpublished decision). Each protest, including supplemental protest grounds filed after receiving the

agency reports, raised a variety of challenges to the agency's evaluation of quotations and the reasonableness of the agency's best-value determination and award decision.

On July 12, 2023, after the protest record was developed, the GAO attorney assigned to the protest contacted the parties and offered alternative dispute resolution (ADR) as a way to resolve the protest. Email from GAO to the Parties' Counsel dated July 12, 2023. The GAO attorney requested responses to the offer to conduct ADR by July 14; on July 13, DOL submitted a notice of corrective action, in which the agency stated it was "setting aside the selection decision and award which are being protested." *Id.*; Notice of Corrective Action. DOL's notice also provided that the agency was reassessing its needs and the best means of acquiring them, and stated that additional actions could include revising, reissuing, or cancelling the RFQ, or alternatively, conducting exchanges with the vendors.⁴ Notice of Corrective Action. We dismissed the protest as academic on July 25, 2023. *Persistent Tech., Inc.*, B-420960.3, B-420960.5, July 25, 2023 (unpublished decision).

DISCUSSION

PTI seeks a recommendation that it be reimbursed its reasonable costs of filing and pursuing its protest and supplemental protest. PTI argues that the agency unduly delayed taking corrective action--as evidenced by its failure to do so until after the filing of the agency report, submission of PTI's comments, and the GAO attorney's offer to conduct ADR--in response to clearly meritorious protest grounds. Request for Costs at 6-20. The agency responds that it took corrective action in response to 2TechJV's protest, rather than PTI's protest, and that PTI's protest allegations were not clearly meritorious. Opposition to Req. for Costs at 2-5.

Based upon our review of the record, and as discussed below, we recommend that PTI be reimbursed its costs related to its protest and supplemental protest allegations concerning the agency's technical and past performance evaluations. We recommend that PTI be reimbursed its costs because the agency unduly delayed taking corrective action in response to clearly meritorious protest grounds. We further conclude one of PTI's non-meritorious protest grounds is severable from the clearly meritorious protest grounds and we do not recommend reimbursement for that protest ground.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs under 4 C.F.R. § 21.8(e) if we determine that the agency unduly delayed taking corrective action in the face of clearly meritorious protest grounds. *East Coast Nuclear Pharmacy--Costs*, B-412053.5, Aug. 31, 2016, 2016 CPD ¶ 249 at 5. We consider a protest to be clearly meritorious when a reasonable agency inquiry into the protest allegations would show facts

⁴ The agency clarified that a stay of the award to Addx was in place and only if the agency proceeded to evaluate revised quotations after exchanges and another firm was selected would the agency terminate the contract with Addx. Clarification of Corrective Action at 1.

disclosing the absence of a defensible legal position. *Octo Consulting Grp., Inc.--Costs*, B-414801.4, Dec. 14, 2017, 2018 CPD ¶ 52 at 3. This principle is intended to prevent inordinate delay in investigating the merits of a protest and taking corrective action once an error is evident, so that a protester will not incur unnecessary effort and expense in pursuing its remedies before our Office. *Id.*

We generally consider corrective action to be prompt if it is taken before the due date for the agency report responding to the protest, but not prompt where corrective action is taken after that date. *PNS Holdings, LLC--Costs*, B-418798.3, Oct. 1, 2020, 2021 CPD ¶ 93 at 2-3. Furthermore, where a new protest allegation is raised after the filing of the agency report, corrective action is prompt if taken prior to the deadline set by our Office for the agency's response to the new protest grounds. See *Alliant SB CTA, LLC--Costs*, B-411842.5, Nov. 4, 2016, 2016 CPD ¶ 323 at 2-3.

As an initial matter, the record here does not demonstrate that DOL took corrective action as a result of another vendor's--as opposed to PTI's--protest. Nowhere in DOL's notice of corrective action and request for dismissal does the agency explain that it is taking corrective action in response to another protest. Indeed, the entire notice, filed one day after the offer of ADR, says:

The Department has decided to take corrective action in this procurement, setting aside the selection decision and award which are being protested. As part of its corrective action, DOL intends to reassess its needs and determine the best means of acquiring needed services. DOL may if warranted revise, reissue, or cancel the Solicitation. Should DOL proceed with the evaluation of current offerors, DOL will conduct discussions with offerors. The Department will notify affected vendors of any solicitation revisions, cancellations, or other pertinent developments. As DOL's corrective action renders this protest moot, DOL respectfully requests that GAO dismiss the protest.

Notice of Corrective Action. Moreover, the agency's clarification of its corrective action does not reference another vendor's protest. While it may be that another protest influenced the agency decision to take corrective action, the agency has not shown that its corrective action was taken in response to a different protest. Moreover, even if the agency took corrective action in response to another protest which rendered PTI's protest academic, the agency is still required to demonstrate that the protest grounds in PTI's protest were not clearly meritorious and that the agency did not unduly delay taking corrective action. See *Skyward IT Sols., LLC--Costs*, B-421561.11, Oct. 25, 2023, 2024 CPD ¶ 4 at 2-3 (denying request for reimbursement of costs when the agency took corrective action after the submission of the agency report and protester comments where the protest grounds were not clearly meritorious).

Clearly Meritorious Protest Grounds

Next, we turn to the merits of PTI's protest grounds. PTI contends its protest grounds are clearly meritorious and seeks a recommendation regarding recovery of all its costs of filing and pursuing its protest grounds. In its initial protest, PTI argued that the agency's evaluation of PTI's quotation under the technical and the past performance factors was unreasonable. PTI also alleged the agency unreasonably evaluated Addx's past performance. Further, PTI asserted that DOL improperly disclosed PTI's price and challenged the agency's best-value tradeoff analysis and award decision. Ultimately, PTI argued that the agency's conduct was unlawful and prejudicial to PTI.

In PTI's supplemental protest, PTI raised new allegations that the agency improperly evaluated Addx's quotation under the transition-in plan subfactor and contended that Addx's quotation did not comply with a material requirement of the solicitation. PTI also alleged that the agency subjected PTI to unlawful disparate treatment in the evaluation of quotations under the technical factor because the agency failed to assign to PTI's quotation the same strengths and significant strengths the agency assigned to Addx's for substantially indistinguishable features.

As explained below, we find PTI's challenges to the agency's technical and past performance evaluations to be clearly meritorious because a reasonable agency inquiry into the protest allegations would have disclosed the absence of legally defensible positions. We further conclude, with one exception, that PTI's other grounds of protest, including its challenge to the agency's best-value tradeoff and disparate treatment allegations, are intertwined with the clearly meritorious protest grounds and should also be reimbursed. In this connection, we do not agree, however, with PTI that its complaint pertaining to the agency's disclosure of its price was a clearly meritorious protest ground. We discuss some representative examples below.

Technical Evaluation

In challenging the agency's technical evaluation, PTI argued that the agency should have found Addx's quotation ineligible for award because the transition-in plan did not comply with a material requirement of the solicitation. Comments & Supp. Protest at 2-6. PTI asserted that the solicitation required the contractor to assume full responsibility for performance within 30 days of award, but that Addx's quotation plainly stated that Addx would assume full responsibility of the contract "at the beginning of the contract execution period (i.e., **31 days after contract award**)," which is not within 30 days. *Id.* at 3 (emphasis added) (quoting Addx's technical volume); AR, Tab 7, Addx Technical Quotation at 45; see also RFQ amend. 4 at 24-25. PTI also pointed out that Addx's proposed transition schedule specified that Addx would "[a]ssume responsibility for [OSHA information system support services] operations" on day 31. Comments & Supp. Protest at 3-4; AR, Tab 7, Addx Technical Quotation at 49.

In response, the agency agreed that the transition-in plan timeline was a material requirement but argued that Addx fully complied with the requirement because its

quotation demonstrated a plan to begin and complete all necessary transition activities within the 30-day transition-in period. Supp. Memorandum (MOL) at 3-8. The agency explained that “there was nothing in Addx’s proposal (sic) to raise any doubt that Addx planned to be fully capable of assuming operations at the conclusion of the transition-in period.” *Id.* at 6.

As explained below, we agree with the protester that Addx’s quotation failed to demonstrate compliance with the material solicitation requirement that the contractor assume full responsibility for performance within 30 days after award, and that the quotation, as submitted, should therefore not have been considered acceptable. Accordingly, we consider that argument to have been clearly meritorious.

The evaluation of quotations in procurements conducted under FAR subpart 8.4 is matter within the discretion of the procuring agency. *eKuber Ventures, Inc.*, B-420877, B-420877.2, Oct. 13, 2022, 2022 CPD ¶ 256 at 4. Our Office does not independently evaluate quotations; rather, we review the agency’s evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. *Id.* A protester’s disagreement with the agency’s judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Id.*

A quotation that takes exception to a solicitation’s material terms and conditions should be considered unacceptable and may not form the basis for an award. *Arrington Dixon & Assocs., Inc.*, B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 11. Material terms of a solicitation include those which affect the price, quantity, quality, or delivery of the goods or services being provided. *Id.* In determining the technical acceptability of a quotation, an agency may not accept at face value a promise to meet a material requirement, where there is significant countervailing evidence that was, or should have been, reasonably known to the agency evaluators that should create doubt whether the offeror or vendor will or can comply with that requirement. *Deloitte Consulting LLP*, B-417988.2 *et al.*, Mar. 23, 2020, 2020 CPD ¶ 128 at 6. Moreover, a quotation that contains an ambiguity as to whether the vendor will comply with a material requirement of the solicitation renders the quotation unacceptable. *Id.* at 6-7.

Here, the solicitation states that “[t]he [t]ransition-[i]n is to allow the incoming vendor to staff up to the appropriate support levels and participate in knowledge sharing with the outgoing vendor and to be able to fully support the mission within the first 30 days.” RFQ amend. 4 at 24. The solicitation requires the incoming vendor to mobilize “all staff and other resources so the workforce is functional and operational within 30 days of contract award.” *Id.* at 25; *see also id.* at 33 (specifying vendor performance objectives that require the team to be “fully staffed and functions operating within 30 days of contract award”). Vendors were instructed to describe the processes and procedures used to transition from the incumbent contractor to “full staff support levels” within the timeline provided in the RFQ--within 30 days. *Id.* at 80. The agency would evaluate the proposed transition-in plan to “assess its reasonableness and the likelihood that it will lead to full assumption of contractual responsibility within 30 days of award with minimal disruption or degradation of performance.” *Id.* at 86.

The record shows that Addx's quotation includes, at a minimum, contrary terms. Although Addx provides that it is confident its transition will be completed within 30 days of award, Addx also states that its program manager will be working during the transition period "to assume responsibility for OIS technical operations on Day 31." See Tab 7, Addx Quotation at 44-45. More importantly, Addx "propose[s] the incumbent contractor retain service-delivery responsibility during the 30-day transition period, followed by Team Addx assuming full service-delivery responsibility at the beginning of the contract execution period (i.e., 31 days after contract award)." *Id.* at 45. Addx's transition schedule also shows that it will assume responsibly for OIS support services operations on day 31, while it continues to perform other transition tasks. *Id.* at 49.

The agency was not allowed to rely upon Addx's promise to meet the material requirement to complete the transition-in plan on time, assuming full responsibility of the contract within 30 days, when the rest of the quotation demonstrates that Addx planned to assume full responsibility of the contract on day 31, which is not within 30 days. We find therefore that the agency's arguments defending its evaluation of Addx's technical quotation under the transition-in plan subfactor did not present a defensible legal position.

In response to PTI's request for reimbursement, DOL argues generally that it "presented credible factual and legal defenses" in its agency report and that its "'reasonable agency inquiry' into each and every protest[] ground[] revealed 'a defensible legal position.'" Opposition to Req. for Costs at 3 (citing *Distributed Sols., Inc.--Costs*, B- 403566.2, Feb. 14, 20112011 CPD ¶ 41 at 3). DOL contends further that "each issue raised by the protester was, in fact, a close question." *Id.* at 4. We disagree.

We think there a clear difference between the 30 days the RFQ required and the 31 days Addx quoted. Moreover, this is not a novel issue. It is well-settled that a quotation taking exception to a solicitation's material terms and conditions should be considered unacceptable and may not form the basis for an award, and that a quotation containing an ambiguity as to whether the vendor will comply with a material requirement of the solicitation renders the quotation unacceptable. *Arrington Dixon & Assocs., Inc., supra* at 11; *Deloitte Consulting LLP, supra* at 6-7. Accordingly, DOL had no defensible legal position and this protest ground was not a close question. As such, we find the allegation clearly meritorious.

Past Performance Evaluation

PTI also alleged that the agency deviated from the stated evaluation criteria when it rated Addx's past performance as very good despite Addx's limited relevant past performance.⁵ Protest at 33-34. In this regard, PTI contended that the record does not support a rating of very good; DOL found only one of Addx's three required past

⁵ Very good is the second highest rating available under the past performance factor. AR, Tab 10, Past Performance Evaluation at 1.

performance references to be relevant in size/dollar value, scope, and complexity to the current requirement. Comments & Supp. Protest at 30. Moreover, PTI argued that as part of the agency's evaluation, the agency relied on a contractor performance assessment reporting system (CPARS) report that did not pertain to the entity on whose behalf it was submitted.

The agency responded that Addx submitted three references, one of which the agency determined was relevant to the dollar value, scope and complexity of this procurement and met the recency requirement. COS at 7; MOL at 12-13. The single relevant past performance reference Addx submitted was for its subcontractor, MindPetal. MindPetal, itself, performed on the referenced contract as a subcontractor to the incumbent contractor, Perspecta Enterprise Services, LLC (Perspecta). The referenced requirement was part of DOL's information technology (IT) operations and maintenance (ITOM) contract.⁶ AR, Tab 8a, Addx Past Performance Quotation at 3, 5.

As part of its past performance evaluation, the agency reviewed both a past performance questionnaire for MindPetal, completed by an agency official in the DOL, Office of the Assistant Secretary for Administration & Management, Office of the Chief Information Officer. The agency also considered a CPARS report from 2021 evaluating the performance of Perspecta, which makes no reference to MindPetal. AR, Tab 8c, MindPetal Past Performance Questionnaire; AR, Tab 8d, Perspecta CPARS Report.

The past performance questionnaire rated MindPetal exceptional overall. AR, Tab 8c, MindPetal Past Performance Questionnaire at 7. The CPARS report indicated that DOL was satisfied with Perspecta's performance; Perspecta was rated satisfactory for quality, schedule, management, and regulatory compliance, and very good for cost control. AR, Tab 8d, Perspecta CPARS Rept at 3-4. Relying in part on the Perspecta CPARS report, the agency rated Addx's past performance as very good. AR, Tab 10, Past Performance Evaluation at 8. Essentially, the agency argued that Addx's proposed subcontractor, MindPetal performed the ITOM contract, and therefore, the agency reasonably attributed MindPetal's past performance information to Addx. MOL at 12-13.

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *Chicago Am. Mfg. LLC*, B-420533, B-420533.2, May 23, 2022, 2022 CPD ¶ 161 at 6. We will not substitute our judgment for reasonably based past performance ratings; however, we will question an agency's evaluation conclusions where they are unreasonable or undocumented. *Rotech Healthcare, Inc.*, B-413024 *et al.*, Aug. 17, 2016, 2016 CPD ¶ 225 at 5.

⁶ Perspecta is the former name of Peraton Inc.; for consistency with the past performance evaluation documentation, we refer to Perspecta.

We have previously explained that absent solicitation language to the contrary, an agency properly may consider the relevant experience and past performance of proposed subcontractors. See *MLU Servs., Inc.*, B-414555.3, B-414555.6, July 17, 2017, 2017 CPD ¶ 225 at 9; *MCS of Tampa, Inc.*, B-288271.5, Feb. 8, 2002, 2002 CPD ¶ 52 at 6. The key consideration is whether the experience reasonably can be considered predictive of the offeror's performance under the contemplated contract. *MLU Servs., Inc.*, *supra*; *MCS of Tampa, Inc.*, *supra*.

As noted above, in response to PTI's request for reimbursement, DOL argues generally that it conducted a reasonable inquiry into all grounds of protest, which revealed credible legal and factual defenses that DOL provided in the agency report, and that the protest grounds raise close questions. Opposition to Req. for Costs at 3-4. Based upon our review of the record provided, PTI's allegation that the agency unreasonably evaluated Addx's past performance as very good was clearly meritorious. DOL has not explained, nor is it otherwise evident from the record, how Addx can be rated very good when only one of the three required references submitted was identified as relevant, and the single reference was for the performance of one Addx's subcontractors (MindPetal), which performed the referenced contract as a subcontractor to another firm (Perspecta). Moreover, in considering the performance of Addx's subcontractor, the agency relied on a CPARS report for that reference, which purports to assess Perspecta's performance as the prime contractor and does not make any mention of MindPetal. Because Perspecta was not a member of Addx's team, the information provided in the CPARS report cannot reasonably be predictive of either MindPetal or Addx's performance under the solicited effort. Accordingly, we find that DOL has not presented a legal nor a factual defense of the protest ground. As such, we conclude the allegation is clearly meritorious.

Disclosure of Pricing Information

Finally, we turn to PTI's complaint that the agency improperly disclosed PTI's pricing information. PTI alleged that when it was selected as the original awardee of the task order, the agency disclosed its price to the unsuccessful vendors. Protest at 37. PTI argued that when the agency took corrective action, revising the RFQ and requesting revised quotations, PTI was at a serious competitive disadvantage because the other vendors had PTI's pricing information and could develop more competitive price quotations. *Id.* PTI alleged that the agency failed to mitigate PTI's competitive disadvantage. *Id.*

The agency responded that it had substantially revised the solicitation as part of the corrective action, including reorganizing tasks from one CLIN to another CLIN and changing the operational CLIN from fixed-price to labor-hour. COS at 9; MOL at 13-14. The agency maintained that vendors would have no reason to rely on past pricing as a predictor for pricing their revised price quotations. COS at 9; MOL at 14. The agency also contended our Office does not typically view disclosures of total contract prices as unduly prejudicial and that our Office does not prohibit agencies from taking corrective

action to include seeking revised price quotations when an original awardee's price has been disclosed. MOL at 14-15.

The details of a corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *360 IT Integrated Sols.; VariQ Corp.*, B-414650.19 *et al.*, Oct. 15, 2018, 2018 CPD ¶ 359 at 6. Where the corrective action taken by an agency is otherwise unobjectionable, a request for revised price proposals is not improper merely because the awardee's price has been exposed. *Crewzers Fire Crew Transport, Inc.*, B-406601, July 11, 2012, 2012 CPD ¶ 204 at 8-9.

We find that this was protest ground was not clearly meritorious. In this regard, even though PTI's prices were disclosed, the agency's corrective action was not otherwise objectionable. Moreover, in light of the extensive changes to the solicitation and, in particular, its pricing structure, it is not apparent how useful PTI's pricing information would have been to the other vendors. We therefore do not recommend reimbursement for this protest ground.

Undue Delay

With respect to the promptness of the agency's corrective action under the circumstances, we review the record to determine whether the agency took appropriate and timely steps to investigate and resolve improprieties. *Apex Transit Sols., LLC--Costs*, B-418631.8, Aug. 13, 2021, 2021 CPD ¶ 282 at 7. As noted above, while 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. *PNS Holdings, LLC--Costs, supra* at 2-3; *Alliant SB CTA, LLC--Costs, supra* at 2-3.

The record shows that DOL did not take corrective action until after it filed initial and supplemental agency reports, the protester filed its comments, and the GAO attorney assigned to the case offered to conduct ADR in an effort to resolve the protest. As a result, we find that the agency unduly delayed in taking corrective action in the face of clearly meritorious protest grounds.

Severability

Finally, we review PTI's protest grounds to determine whether the clearly meritorious protest grounds are severable from those allegations that are not clearly meritorious. Generally, we will recommend that a protester receive costs incurred with respect to all issues pursued, not merely those upon which it prevails. See *Coulson Aviation (USA) Inc.; 10 Tanker Air Carrier, LLC--Costs*, B-406920.6, B-406920.7, Aug. 22, 2013, 2013 CPD ¶ 197 at 5. 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. 31 U.S.C. § 3554(c)(1)(A); *Fluor Energy Tech. Servs., LLC--Costs*, B-411466.3, June 7, 2016, 2016 CPD ¶ 160 at 3.

We have in appropriate cases however, limited our recommended reimbursement of protest costs where a part of the costs is allocable to an unsuccessful 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. In determining whether protest issues are so clearly severable as to constitute separate protests, we consider, among other things, the extent to which the issues are interrelated or intertwined--i.e., the extent to which successful and unsuccessful arguments share a common core set of facts, are based on related legal theories, or are otherwise not readily severable. See *Deque Sys., Inc.--Costs*, B-415965.5, Aug. 23, 2018, 2018 CPD ¶ 304 at 5.

In this case, we find that a common core set of facts and the legal arguments raised inextricably link the non-price protest allegations. All of PTI's arguments concerning the non-price evaluation--i.e., technical and past performance evaluations--are intertwined and share common facts and legal theories with the clearly meritorious protest grounds sampled above. These evaluations formed the basis for PTI's arguments that the agency unreasonably evaluated Addx's quotation under the transition-in plan subfactor and improperly attributed Perspecta's past performance information to Addx's subcontractor, MindPetal. Accordingly, because PTI's non-price evaluation protest grounds share a common core set of facts, the protest issues are not readily severable.

Similarly, we will not sever PTI's protest grounds relating to the agency's tradeoff and award decision. Protest at 40-41. This protest ground is derivative of the initial and supplemental protest grounds of the agency's technical and past performance evaluations. *Ruchman & Assocs., Inc.--Costs*, B-419968.3, Mar. 10, 2022, 2022 CPD ¶ 76 at 9. Since we find PTI's allegations that the agency unreasonably evaluated vendors under non-price factors clearly meritorious, we conclude that this derivative challenge to the best-value tradeoff analysis and award decision also provides a basis upon which to recommend costs. *Id.*

On the other hand, we view PTI's allegation that the agency improperly disclosed its price and failed to mitigate PTI's competitive disadvantage--which we find was not clearly meritorious--as plainly severable from the non-price evaluation challenges because the questions involved distinct aspects of the record and were not intertwined factually or legally.

RECOMMENDATION

We recommend that DOL reimburse PTI's cost of filing and pursuing its initial and supplemental protests with respect to its technical and past performance evaluation challenges, which encompass PTI's protest grounds alleging disparate treatment, and an unreasonable best-value tradeoff analysis and award decision. We also recommend DOL reimburse PTI reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). PTI's certified

claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receiving this decision. *Id.* § 21.8(f)(1).

The request is granted in part and denied in part.

Edda Emmanuelli Perez
General Counsel