



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: General Dynamics Information Technology, Inc.

File: B-422421.6; B-422421.7

Date: July 17, 2024

Noah B. Bleicher, Esq., Moshe B. Broder, Esq., Ginsey V. Kramarczyk, Esq., and Sierra A. Paskins, Esq., Jenner & Block, LLP, for the protester.
James Y. Boland, Esq., Kelly Boppe, Esq., and Lindsay Reed, Esq., Venable LLP, for Salient CRGT, Inc., the intervenor.
Michael J. Farr, Esq., Erika Whelan Retta, Esq., and Josephine Farinelli, Esq., Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest and supplemental protest challenging the agency's pending corrective action in response to a prior protest are dismissed as premature because they anticipate improper agency action while the corrective action remains ongoing.
 2. Protest challenging the agency's stated intention to analyze a sample of the proposed labor rates for the price realism evaluation is denied where the protester has not shown that this approach is unreasonable or inconsistent with the solicitation.
-

DECISION

General Dynamics Information Technology, Inc., of Falls Church, Virginia, protests the agency's pending corrective action following General Dynamics' prior protest of the award of a contract to Salient CRGT, Inc., of Fairfax, Virginia, under request for proposals (RFP) No. FA489023R0013, issued by the Department of the Air Force for communications and technical support services. The protester argues that the agency's proposed corrective action to reevaluate proposals under the price/cost factor anticipates an evaluation that is unreasonable and inconsistent with the solicitation. In addition, General Dynamics contends that the agency should reevaluate proposals under the technical solution factor.

We deny the protest in part and dismiss it in part.

BACKGROUND

The Air Force issued the solicitation on March 24, 2023. The solicitation contemplated award on a best-value tradeoff basis considering two factors: technical solution and price/cost.¹ Agency Report (AR), Tab 3, RFP at 202. As relevant here, under the price/cost factor, the agency would evaluate proposals to “ensure they are complete, fair and reasonable, realistic, and balanced.” *Id.* at 207. The RFP stated that the agency “will evaluate the realism of each [o]fferor’s proposed rates” to include “an evaluation of the extent to which proposed rates are sufficient for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the [o]fferor’s [t]echnical proposal.” *Id.* at 208. The solicitation also incorporated Federal Acquisition Regulation (FAR) provision 52.222-46, Evaluation of Compensation for Professional Employees, and required offerors to submit compensation plans that would be evaluated pursuant to that provision.

On February 16, 2024, the agency made an award to Salient CRGT. Memorandum of Law (MOL) at 6. On March 11, General Dynamics filed a protest with our Office challenging the award to Salient. General Dynamics alleged that the agency failed to consider that Salient had an organizational conflict of interest; the agency unreasonably evaluated professional compensation and price realism; the agency unreasonably evaluated Salient’s proposal under the technical solution factor with respect to the work performance and transition-in subfactors; the agency failed to assess multiple strengths in General Dynamics’ proposal; and the best-value tradeoff decision was flawed. Prior Protest Pleading, B-422421.1, Mar. 11, 2024 at 13-44.

On March 28, the Air Force notified our Office that it would take corrective action in response to the protest as follows:

[T]he Air Force will re-perform the price realism analysis for all offerors who remained in the competitive range at the time of the protested award decision, to include the professional compensation of all the professional labor categories included in requirements set forth in the Solicitation. The Air Force will then document the evaluation to reflect the results of the re-performed price realism analysis, present it to the Source Selection Authority, and make a new best-value award decision consistent with the terms of the Solicitation. If the decision is to award to an offeror other than Salient, the Air Force will terminate the existing contract and associated task orders and award a new contract to the successful offeror. The Air Force may also take any other form of corrective action that it deems appropriate.

¹ Proposals were first evaluated against three pass/fail factors: facility security clearance; small business participation; and program and technical execution. Proposals that passed each of these factors were considered under the two tradeoff factors. RFP at 203. The technical solution factor had three subfactors: program management, work performance, and transition-in. *Id.* at 202.

AR, Tab 6, Notice of Corrective Action at 1-2, 5.

On April 12, the Air Force advised our Office that as part of the corrective action it would also investigate the alleged conflict of interest allegation. Contracting Officer's Statement (COS) at 9 n.2. The agency's corrective action rendered the protest academic, and GAO dismissed the protest. *General Dynamics Information Technology, Inc.*, B-422421, B-422421.5, April 17, 2024 (unpublished decision).

On April 8, General Dynamics filed the instant protest in our Office in which it challenges the agency's proposed corrective action.

DISCUSSION

General Dynamics argues that the proposed corrective action anticipates that the agency will not evaluate price realism and professional compensation in accordance with the solicitation.² General Dynamics also raises a supplemental protest ground arguing that it learned from the agency report that the agency treated General Dynamics and Salient disparately in the evaluation under the technical solution factor because the agency assigned two strengths to Salient's proposal ([DELETED] and [DELETED]), but did not assign strengths to General Dynamics's proposal even though both offerors proposed similar solutions. General Dynamics asserts that the agency was therefore required to re-evaluate the offerors' proposals under the technical solution factor as part of its corrective action. As discussed below, we dismiss both protest grounds as premature. In addition, General Dynamics argues that in performing its price realism analysis the agency is not considering enough labor categories. We deny this basis of protest.

Compliance with Solicitation

² The notice of corrective action included the list of labor categories that the agency considered subject to the professional compensation evaluation under FAR provision 52.222-46. AR, Tab 6, Notice of Corrective Action at 2-6. In its initial protest, General Dynamics also asserted that the agency's list of all applicable labor categories that were considered professional for purposes of the FAR provision 52.222-46 evaluation was flawed and should include additional labor categories. Protest at 15-22. General Dynamics withdrew this basis of protest. Comments at 2 n.2. In addition, General Dynamics argued that the agency improperly planned to limit its price realism analysis only to direct labor rates. Protest at 14. General Dynamics also withdrew this basis of protest. Comments at 3-4 n.3.

In its prior protest challenging the award to Salient, General Dynamics asserted that the agency failed to reasonably evaluate Salient's pricing. General Dynamics complained both that the agency failed to reasonably evaluate the price realism of Salient's proposal, and separately that the agency failed to reasonably evaluate the professional compensation of Salient's labor force as required by FAR provision 52.222-46. Prior Protest Pleading, B-422421.1, Mar. 11, 2024 at 24-35. As part of its corrective action the agency proposed to "re-perform the price realism analysis for all offerors who remained in the competitive range at the time of the protested award decision, to include the professional compensation of all the professional labor categories included in the requirements set forth in the [s]olicitation." AR, Tab 6, Notice of Corrective Action at 1.

General Dynamics protests that this statement does not make clear that the agency will evaluate price realism and professional compensation separately as required by the solicitation and procurement law, and instead reflects that the agency anticipates improperly conflating the two analyses. The agency responds that General Dynamics's argument should be dismissed as premature and speculative since it "merely anticipates improper [a]gency action during the corrective action reevaluation." MOL at 8.

Based on our review of the record, we agree with the agency. General Dynamics assertion that the agency will not conduct a reasonable price realism evaluation and evaluation under FAR provision 52.222-46 in implementing its corrective action is premature as it merely anticipates that the agency will evaluate proposals unreasonably and in a manner inconsistent with the terms of the RFP. Our Office assumes that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and we will not consider a protest allegation which speculates that an agency will not do so. *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3. In the event the protester is not the successful offeror following the agency's corrective action, it may file a protest challenging the price realism evaluation, consistent with our Bid Protest Regulations. *Hewlett Packard Enterprise Company*, B-413444.4, B-413444.5, Jan. 18, 2017, 2017 CPD ¶ 29 at 5.

General Dynamics also asserts that in conducting the price realism analysis the agency unreasonably plans to evaluate only 28 labor categories when there are 70 labor categories performing at 8 locations, a total of 560 individual labor rates to be considered. Protest at 14. In response, the agency expressly stated that in addition to the 28 labor categories considered to be professional employees, it will also select a random sample of 14 additional labor categories and will therefore evaluate 42 (or 60 percent) of the labor categories proposed rates for each location. COS at 10-11. The agency contends that this approach is consistent with the solicitation, and that nothing in the solicitation required that the agency evaluate all the labor categories as part of the price realism evaluation. *Id.* at 12. We deny this basis of protest.

General Dynamics has not shown that the agency's stated approach to evaluating the rates for a sample of the labor categories is unreasonable or inconsistent with the

solicitation. While the protester contends that the solicitation contemplated the evaluation of all labor category rates because it stated that the agency will assess “[o]fferor’s proposed base rates,” the protester has not identified any solicitation language that expressly commits the agency to include the labor rates for all the labor categories in its price realism evaluation. *Id.* at 9, Comments at 4. In addition, the protester has failed to articulate why evaluating only 60 percent of the labor categories for each location is unreasonable.

Disparate Evaluation

General Dynamics alleges that it learned from the agency report filed in response to the protest that the agency treated General Dynamics and Salient disparately during the evaluation of the technical solution factor. The protester contends that the agency assigned two strengths to the proposal submitted by Salient, but not to the proposal submitted by General Dynamics, even though both offerors provided similar solutions. General Dynamics asserts that during corrective action the agency must therefore re-evaluate proposals under the technical solution factor.

The agency asserts that this protest ground is also premature because corrective action is still ongoing, and the agency has yet to make a new award decision. Supp. MOL at 4. We agree. A challenge to the agency’s evaluation judgments is premature when the agency is undergoing corrective action and has not yet made an award decision. See *360 IT Integrated Sols.; VariQ Corp.*, B-414650.19 *et al.*, Oct. 15, 2018, 2018 CPD ¶ 359 at 10. Moreover, where an agency undertakes corrective action that will supersede and potentially alter prior procurement actions, our Office will generally decline to rule on a protest challenging the agency’s prior actions because the protest is rendered academic. *Odyssey Systems Consulting Group, Ltd.*, B-418440.8. B-418440.9, Nov. 24, 2020, 2020 CPD ¶ 385 at 8; see also, e.g., *HP Enter. Servs., LLC--Recon.*, B-413382.3, Jan. 26, 2017, 2017 CPD ¶ 32 at 3 (“explaining protest was properly dismissed as academic on the basis that the agency’s pending corrective action ‘would supersede and potentially alter its prior source selection decision.’”). The same rationale applies to the current challenge to the technical evaluation. That is, although the agency has not committed to reevaluating technical proposals, the corrective action the agency is undertaking will supersede and potentially alter the prior procurement action, and the award decision. Accordingly, we dismiss this basis of protest as premature.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel