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# Decision

**Matter of:** HeiTech-PAE, LLC

**File:** B-420049.7

**Date:** November 15, 2021

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## DIGEST

Protest challenging the agency's corrective action, which involves the reevaluation of offerors' proposals, is dismissed as premature where the protester merely anticipates improper, prejudicial agency action.

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## DECISION

HeiTech-PAE, LLC of Landover, Maryland, protests the corrective action being taken by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), in connection with the agency's procurement of administrative and clerical services under request for proposals (RFP) No. 70SBUR21R00000009. HeiTech-PAE argues that the proposed corrective action is inadequate to address all aspects of an earlier protest it filed with our Office.

We dismiss the protest as premature.

## BACKGROUND

The RFP contemplated the award of a fixed-price and time-and-materials contract for a 12-month base period with four 12-month option periods. Agency Report (AR), Tab 5, RFP at 62, 153. The solicitation established six evaluation criteria--facility clearance, staffing recruitment and retention, corporate experience, management approach, past performance, and price--and stated that award was to be made on a best-value tradeoff basis. *Id.* at 71. The USCIS received and evaluated proposals from offerors, including HeiTech-PAE and Brilliant Corporation, and ultimately selected Brilliant for award. Contracting Officer's Statement (COS), B-420049.3, Sept. 8, 2021, at 3.

On August 9, 2021, HeiTech-PAE filed a protest with our Office challenging the propriety of the contract award to Brilliant. HeiTech-PAE argued the agency's evaluation of proposals under various evaluation factors and resulting award decision were improper. Protest, B-420049.3, Aug. 9, 2021; Comments and Supp. Protest, B-420049.3, Sept. 20, 2021. The agency subsequently advised our Office on September 23 that, based on the allegations raised in the protester's supplemental protest, the agency intended to take corrective action by reevaluating offerors' proposals, including that of HeiTech-PAE, and making a new award decision. Notice of Corrective Action, B-420049.3; B-420049.5. As a result of the agency's announced corrective action, we dismissed HeiTech-PAE's protests as academic. *HeiTech-PAE, LLC*, B-420049.3, B-420049.5, Sept. 27, 2021 (unpublished decision). This protest followed.

## DISCUSSION

HeiTech-PAE maintains that the agency's proposed corrective action is inadequate. Specifically, the protester contends USCIS's planned corrective action "does not commit to performing a complete reevaluation of the offerors' proposals." Protest, at 9. HeiTech-PAE essentially argues here that because its prior allegations regarding the agency's evaluation are (self-proclaimed) meritorious ones, and because the agency's corrective action does not expressly commit to remedying all errors, the corrective action is thereby deficient. Additionally, as detailed below, HeiTech-PAE alleges that the agency's corrective action introduces a patent ambiguity into the solicitation. HeiTech-PAE also contends its protest here is timely insofar as USCIS has announced its intention to act improperly and not remedy HeiTech-PAE's previous protest issues as part of its corrective action. We find HeiTech-PAE's protest of the agency's yet-to-be-completed evaluation to be premature.

As an initial matter, we note that we have considered the merits of various protests challenging the adequacy of an agency's proposed corrective action. In those instances where the agency's proposed corrective action alters or fails to alter the ground rules for the competition (*i.e.*, aspects that apply to all offerors), we have considered a protester's challenge of such to be analogous to a challenge to the terms of a solicitation, thus providing the basis for protest prior to award. *Northrop Grumman Info. Tech., Inc.*, B-400134.10, Aug. 18, 2009, 2009 CPD ¶ 167 at 10 (finding protest of agency's decision not to hold discussions or permit clarifications to be a ground rules challenge); *Domain Name Alliance Registry*, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7-8 (finding challenge to the ground rules of the competition to be untimely when raised after award); see 4 C.F.R. § 21.2(a)(1). However, in those instances where the agency's proposed corrective action does not alter the ground rules for the competition, we have considered a protester's preaward corrective action challenge to be premature. *SOS Int'l, Ltd.*, B-407778.2, Jan. 9, 2013, 2013 CPD ¶ 28 at 2 (dismissing protest of corrective action as premature where allegation is that agency's proposed course would lead to an improper evaluation); *Alliant Techsystems, Inc.*, B-405129.3, Jan. 23, 2012, 2012 CPD ¶ 50 at 2 n.1 (finding as premature allegation that agency's proposed course of action would lead to an improper evaluation).

HeiTech-PAE argues that the course of action contemplated by the agency, *i.e.*, not expressly committing to reevaluate all aspects of offerors' proposals, will lead to an improper evaluation. However, even assuming USCIS does not reevaluate all of HeiTech-PAE's prior protest grounds, an agency's decision not to reexamine various aspects of an evaluation as part of its corrective action does not effectively change the ground rules for the competition. *SOS Int'l, Ltd., supra*. Accordingly, we need not now resolve this dispute, since we view HeiTech-PAE's assertion of an improper future evaluation as premature, given that an award decision has not yet been made. See *Intermarkets Global*, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 4-5; *Computer Assocs. Int'l, Inc.*, B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 4 (protests that merely anticipate improper agency action are speculative and premature).

We also find no merit in the protester's assertion that the agency's planned corrective action, *i.e.*, reevaluating offerors' proposals and making a new selection decision, somehow results in a patent solicitation ambiguity. The protester's argument here is essentially as follows: the agency's prior evaluation was, among other things, based on a flawed interpretation of the solicitation regarding the requirements for the deputy program management (DPM) position. The protester further contends the agency's prior evaluation suggests that USCIS intends to reevaluate HeiTech-PAE's proposal using the same, allegedly, flawed interpretation. Finally, according to the protester, were the agency to reevaluate the protester's proposal in a manner inconsistent with HeiTech-PAE's reasonable interpretation of the relevant solicitation provision, "it creates a patent ambiguity." Protest at 10, *citing Competitive Range Sols, LLC*, B-415274.2, Apr. 4, 2018, 2018 CPD ¶ 137.

As a preliminary matter, we find the protester incorrectly asserts a proposition for which our *Competitive Range Solutions (CRS)* decision stands. In *CRS*, the protester argued, after award, that the agency had improperly waived a material solicitation requirement regarding award eligibility. We found the agency's interpretation of an award eligibility requirement (that it applied at the time of award) to be reasonable, and the protester's interpretation of the requirement (that it applied at the time of quotation submission) to be inconsistent with the solicitation, *i.e.*, unreasonable. *Id.* at 6. We also stated that, even if protester's interpretation was a reasonable one, it would, at best, render the solicitation term ambiguous because it would have been subject to two or more reasonable interpretations. Our decision reasoned that any "such ambiguity would be obvious on the face of the solicitation," and therefore would have constituted a patent ambiguity, which should have been challenged prior to the time for receipt of initial quotations. *Id.* Contrary to the protester's assertion, our decision in *CRS* does not stand for the proposition "that a patent ambiguity may arise based on agency action that demonstrates the agency's intent to take action in a manner that is inconsistent with a reasonable interpretation of the solicitation." Protest at 10.

Further, the agency has indicated that it does not disagree with the protester regarding the solicitation provision in question. As USCIS stated in response to HeiTech-PAE's protest here, "[t]he Agency and Protester both agree that the RFP now, and always has, required an offeror's proposed DPM to possess a minimum of five years of

comprehensive project management experience.” Req. for Dismissal at 5, *citing* AR, Tab 8, Performance Work Statement at 63 (“[DPM] Minimum Qualifications: Minimum of five years of comprehensive project management experience. . . .”). We, therefore, find no merit to HeiTech-PAE’s present assertion that the agency has somehow indicated it plans to reevaluate proposals in a manner inconsistent with the solicitation or that an ambiguity exists.

Finally, the protester misstates our decisions regarding solicitation ambiguities. A solicitation is patently ambiguous where two or more reasonable interpretations of the solicitation are possible, and such ambiguity is obvious on the face of the solicitation. *See, e.g., Trailboss Enters., Inc.*, B-419209, Dec. 23, 2020, 2020 CPD ¶ 414 at 7; *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. By contrast, a latent ambiguity is more subtle (*i.e.*, not obvious, gross, or glaring) and often comes to light only as part of a subsequent agency evaluation. *Millennium Corp., Inc.*, B-416485.2, Oct. 1, 2018, 2018 CPD ¶ 329 at 5; *A-P-T Research, Inc.*, B-414825, B-414825.2, Sept. 27, 2017, 2017 CPD ¶ 337 at 12. There is simply no need to look outside of the solicitation when determining whether an ambiguity is apparent on the face of the solicitation (*i.e.*, a patent one). *See Planned Sys. Int’l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 5 (finding an ambiguity to be patent when it was apparent on the face of the solicitation itself). Here, by contrast, HeiTech-PAE’s claim of a patent solicitation ambiguity is predicated upon a yet-to-be completed agency evaluation. In the context here, where the agency indicates no disagreement regarding the interpretation of the solicitation provision in question and has yet to complete its evaluation of offerors’ proposals, we do not find a patent ambiguity to exist.

In sum, we find HeiTech-PAE’s attempt to turn what is essentially an evaluation challenge into a solicitation challenge to be entirely unpersuasive, and its challenge to a yet-to-be completed evaluation premature. If HeiTech-PAE is not selected for award, it may raise whatever evaluation errors it deems appropriate at that time. *Intermarkets Global, supra* at 5.

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel