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Decision

Matter of: Booz Allen Hamilton, Inc.--Costs

File: B-420116.4; B-420116.5

Date: July 27, 2022

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DIGEST

1. Request that GAO recommend reimbursement of protest costs is granted in part where the agency unduly delayed taking corrective action in response to clearly meritorious protest arguments and denied in part where some of the requested costs relate to a withdrawn protest.

2. Protester's costs of preparing request to GAO for a recommendation that its protest costs be reimbursed because of unduly delayed agency corrective action on a clearly meritorious protest are reimbursable protest costs.

DECISION

Booz Allen Hamilton Inc. (Booz Allen), of McLean, Virginia, requests that our Office recommend that the General Services Administration (GSA) reimburse it for the reasonable costs of filing and pursuing its protests challenging the issuance of a task order to General Dynamics Information Technology, Inc. (GDIT), of Falls Church, Virginia, under request for proposals (RFP) No. ID04200119. The task order was for information technology (IT) support services for mission deployed systems and special programs.

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

BACKGROUND

On December 8, 2020, GSA issued the solicitation on behalf of the Air Force for IT support of Air Force North (located on Tyndall Air Force Base, Panama City, Florida) for

mission deployed systems and special programs. Agency Report (AR), Tab 16b, RFP amend. 2, Performance Work Statement at 4.¹ The Tyndall Air Force Base has the sole responsibility for ensuring aerospace control and air defense of the continental United States, U.S. Virgin Islands, and Puerto Rico. *Id.* The agency issued the solicitation under the authority of Federal Acquisition Regulation (FAR) section 16.505 to contract holders of GSA's Alliant 2 governmentwide acquisition contract. AR, Tab 16a, RFP amend. 2, Instructions to Offerors at 1, 4. Award was to be made on a best-value tradeoff basis, considering technical approach, past performance, and price. *Id.* at 4-6. The RFP provided that non-price factors were significantly more important than price. *Id.* at 6.

After receiving and evaluating proposals in March 2021, GSA issued "confer letters" to offerors and conducted "confer sessions" or discussions with the offerors. AR, Tab 1, Contracting Officer's Statement (COS) at 4-5. Revised proposals were received and evaluated, and on July 15, GSA selected Booz Allen for award. *Id.* at 6.

Pursuant to a process GSA described in its solicitation as the IN-depth Feedback through Open Reporting Methods (INFORM) 2.0 process, Booz Allen and GDIT requested debriefings and submitted questions to the agency.² COS at 6. GSA conducted the Booz Allen debriefing on July 21. *Id.* In the course of preparing for the GDIT debriefing and responding to GDIT's questions, GSA discovered the evaluators had not considered all of GDIT's proposal. *Id.* GSA then halted its INFORM 2.0 post-award debriefing process and reevaluated the final proposals. *Id.* at 6-8. At the conclusion of the reevaluation, the agency determined that GDIT's proposal presented the best value to the agency and awarded the task order to GDIT for approximately \$64 million on August 18. *Id.* at 7-8, 10.

On August 20, Booz Allen requested a post-award debriefing, and on August 23, Booz Allen submitted pre-debriefing questions to GSA. *Id.* at 8. The agency held its INFORM 2.0 debriefing with Booz Allen on August 26. *Id.* On August 30, Booz Allen submitted additional questions to GSA. *Id.* at 8-9. Booz Allen also sought confirmation from GSA that the post-oral debriefing questions were part of the required debriefing

¹ Citations to the record are to the pages of the Adobe PDF documents produced in the agency report in the underlying protest and supplemental protest, docketed as B-420116.2 and B-420116.3. The solicitation was amended twice and references to the RFP are to the amended solicitation.

² INFORM 2.0 is a GSA initiative "designed to enhance the quality and usefulness of **post-award** communications by providing greater transparency and openness into the procurement process." AR, Tab 16a, RFP amend. 2, Instructions to Offerors at 18. INFORM 2.0 "seeks to increase GSA-industry communication by providing clearer and more complete information to explain the award decision." *Id.* In accordance with the INFORM 2.0 process, GSA shares additional information with offerors that is not required by statute or regulation. *Id.*

under FAR part 16. Comments at 6. GSA responded by quoting the RFP without providing additional information. *Id.*

On August 30, Booz Allen also filed a protest with our Office.³ According to Booz Allen, it filed the protest “[o]ut of an over-abundance of caution given the novelty of the agency’s ‘INFORM 2.0 Process,’” and because GSA did not clearly confirm that Booz Allen’s required debriefing under FAR section 16.505 remained open while Booz Allen’s post-debriefing questions were pending at GSA. *Booz Allen Hamilton, Inc.*, B-420116, Aug 30, 2021 (hereinafter referred to as *Booz Allen Hamilton I*), Protest at 4. In its protest, Booz Allen challenged GSA’s decision to reevaluate proposals after the initial award. *Id.* at 11-15. Furthermore, Booz Allen challenged the agency’s evaluation of proposals under the non-price evaluation factors and resulting best-value determination. *Id.* at 15-28. Booz Allen also argued that the agency’s discussions were misleading and that GSA’s best-value determination was unreasonable and not in accordance with the evaluation criteria. *Id.* at 15-16, 19-20, 25-28.

On September 8, GSA provided written responses to Booz Allen’s post-debriefing questions and stated: “This written response concludes your debrief under the Inform 2.0 procedures and FAR 15.506. Your debrief has concluded.” AR, Tab 82, GSA Response to Booz Allen’s Post-Debriefing Questions at 7. Because GSA’s responses did not resolve Booz Allen’s earlier protest allegations, Booz Allen filed a second protest on September 13 (B-420116.2, hereinafter referred to as *Booz Allen Hamilton II*). Booz Allen termed its second protest a “renewed” protest; this protest was nearly identical to the August 30 protest and raises the same protest grounds.

On September 20, the Government Accountability Office (GAO) attorney assigned to the protest conducted a conference call with the parties to discuss consolidation of the two protest filings. Following the call, GSA requested that Booz Allen withdraw its initial protest filing, and stipulated that it would not challenge the timeliness of the *Booz Allen Hamilton II* protest. Email from GSA to Booz Allen Counsel, Sept. 20, 2021. GSA indicated that Booz Allen’s withdrawal of the initial protest “would enable [Booz Allen’s] post-award GAO protest to move forward under B-420116.2.” *Id.* On September 23, we confirmed Booz Allen’s withdrawal of *Booz Allen Hamilton I*, and closed the file without further action. *Booz Allen Hamilton I*, Confirmation of Withdrawal, at 1.

GSA subsequently filed an agency report in *Booz Allen Hamilton II* defending its non-price evaluations, conduct of discussions, best-value determination, and the tradeoff analysis. Booz Allen then filed comments and a supplemental protest (B-420116.3) reasserting and expanding its challenges to the agency’s evaluation, discussions, and best-value determination. *Booz Allen Hamilton II*, Comments & Supp. Protest at 13-22, 24-29, 40-44. After receipt of the supplemental protest described above, the agency provided a supplemental report responding to Booz Allen’s

³ Because the awarded value of the task order exceeded \$10 million, the protest was within our jurisdiction. See 41 U.S.C. § 4106(f)(1)(B).

allegations and requested alternate dispute resolution (ADR). AR, Tab 90, Supp. Memorandum of Law (MOL) at 1. Thereafter, Booz Allen filed supplemental comments.

On December 14, after development of the protest record, the GAO attorney assigned to the protest conducted an ADR conference. During the conference, the GAO attorney advised the parties that, in her view, GAO would likely sustain Booz Allen's challenges to the reasonableness of the agency's best-value determination. The GAO attorney explained the record did not demonstrate a meaningful comparison of the offerors' non-price proposals, and the agency failed to adequately document its best-value tradeoff analysis. In this regard, the GAO attorney questioned the reasonableness of the agency's finding that Booz Allen's technical proposal, to which the agency assigned 11 significant strengths, was substantially equal to GDIT's proposal, which had received 3 strengths, given the absence of any documentation of the agency's basis for concluding the proposals were substantially equal. The GAO attorney noted that the agency's evaluation record contained no qualitative comparison or explanation regarding why Booz Allen's higher-rated proposal was not worth the price premium. In addition, the GAO attorney advised that although there were concerns with the record regarding Booz Allen's remaining allegations, GAO was unlikely to sustain the other protest grounds.

In response to the conference, the agency informed our Office that it intended to take corrective action by completing a new tradeoff analysis and best-value determination. Although Booz Allen objected to the agency's proposed corrective action because it did not address Booz Allen's claims regarding discussions, our dismissal noted that "[t]he details of implementing the 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." *Booz Allen Hamilton, Inc.*, B-420116.2, B-420116.3, Dec. 17, 2021 (unpublished decision)⁴ (citing *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3). Based on the agency's proposed corrective action, GAO dismissed Booz Allen's protests as academic. *Id.*

Following dismissal of the protest, Booz Allen inquired of GSA whether it agreed to Booz Allen's request for protest costs. Req. for Costs at 1. GSA did not respond to the requester and on December 29, Booz Allen filed its requests that GAO recommend the reimbursement of its costs of filing and pursuing both its initial and renewed protest filings.⁵

⁴ This is Booz Allen's "renewed" protest which was designated earlier as *Booz Allen Hamilton II*.

⁵ Booz Allen filed two identical requests for costs, B-420116.4 and B-420116.5. B-420116.4 pertains to *Booz Allen Hamilton I*, the initial protest, and B-420116.5 relates to *Booz Allen Hamilton II*, the renewed protest. Our Office consolidated the separately filed requests on April 4, 2022.

DISCUSSION

Booz Allen requests that our Office recommend reimbursement of all its protest costs for both *Booz Allen Hamilton I* and *Booz Allen Hamilton II*, as well as the costs of preparing and pursuing its requests for costs. The requester argues that its protest grounds in *Booz Allen Hamilton II* were clearly meritorious, that all its protest claims were interconnected and not severable, and that GSA unduly delayed taking corrective action. Req. for Costs at 1-4; Comments at 2-6. Booz Allen also requests the costs of filing and pursuing *Booz Allen Hamilton I* because the “agency declined to clearly confirm that Booz Allen’s required debriefing remained open pending the agency’s responses to Booz Allen’s debriefing questions.” Req. for Costs at 4; Comments at 6-7. The requester further contends that it voluntarily withdrew its initial protest, *Booz Allen Hamilton I*, because GSA indicated that Booz Allen’s post-award GAO protest allegations would proceed under *Booz Allen Hamilton II*. Req. for Costs at 4.

GSA does not dispute that the requester should be reimbursed its costs of pursuing challenges to the agency’s best-value determination and tradeoff analysis in connection with the *Booz Allen Hamilton II* protest. Resp. to Req. for Costs at 3. GSA contends, however, that GAO should not recommend the agency reimburse Booz Allen the costs related to any other protest ground because, during the ADR conference, the GAO attorney indicated that GAO would likely deny the other protest allegations. *Id.* at 3-5. The agency also asserts that the other protest grounds are severable from the clearly meritorious protest grounds. *Id.* Additionally, GSA responds that Booz Allen should not be reimbursed the costs for pursuing its initial protest, *Booz Allen Hamilton I*, because the requester voluntarily withdrew its protest and GAO did not conclude *Booz Allen Hamilton I* was clearly meritorious at any point while the protest was pending.⁶ *Id.* at 5. GSA also asserts that Booz Allen’s request for costs for filing *Booz Allen Hamilton I* was not made within a reasonable time after the protest was closed. *Id.* at 6.

Based upon our review of the record, and as discussed below, we recommend that Booz Allen be reimbursed its costs related to *Booz Allen Hamilton II*, and the costs associated with filing that request for costs. We deny Booz Allen’s request for reimbursement of its costs for *Booz Allen Hamilton I*, including the costs associated with the filing of that request for costs.

Booz Allen Hamilton II

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 a

⁶ GSA refers to GAO’s notice confirming Booz Allen’s withdrawal of B-420116 as a “dismissal” of the protest. GAO does not dismiss a protest that has been withdrawn; instead, GAO provides the parties with a letter confirming that the protest has been withdrawn and the file is closed without further action. In these cases GAO does not issue any type of decision, dismissal or otherwise.

clearly meritorious protest. *East Coast Nuclear Pharmacy--Costs*, B-412053.5, Aug. 31, 2016, 2016 CPD ¶ 249 at 5. A protest is clearly meritorious when a reasonable agency inquiry into the protest allegations would show facts 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.* The determination of whether to recommend the reimbursement of costs rests on the factual and legal posture of each individual protest, which must be analyzed on a case-by-case basis. *JRS Staffing Servs.--Costs*, B-410708.3, Nov. 9, 2015, 2015 CPD ¶ 349 at 5.

As stated above, GSA does not contest Booz Allen's request for protest costs associated with challenging the agency's best-value determination and tradeoff analysis. Accordingly, we do not further address these aspects of the request and the remaining issue for resolution by our Office is whether the requester should be reimbursed for its other challenges to the agency's evaluation of proposals.

For purposes of determining whether to recommend the reimbursement of protest costs, we generally consider all issues concerning the evaluation of proposals to be intertwined--and thus not severable--and therefore generally will recommend reimbursement of the costs associated with both successful and unsuccessful challenges to an evaluation. *Coulson Aviation (USA) Inc.; 10 Tanker Air Carrier, LLC--Costs*, B-406920.6, B-406920.7, Aug. 22, 2013, 2013 CPD ¶ 197 at 5. We have, in appropriate cases, limited the award of protest costs to successful protesters where a part of their costs is allocable to a 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.

Limiting recovery of protest costs in all cases, however, 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 of 1984. 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. In determining whether protest issues are so clearly severable as to constitute separate protests, our Office considers, among other things, whether the 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.

GSA argues that the remaining challenges are clearly severable because the concerns identified in the ADR focused only on the best-value determination and the tradeoff analysis, and the GAO attorney indicated that the other protest grounds were likely to be denied in a written decision. In our view, these other issues share common factual and legal bases with--and are thus not severable from--the meritorious issues since, like the best-value challenges, they are based on the agency's flawed consideration of the

relative merits of proposals. See *Sevatec, Inc.--Costs*, B-407880.3, June 27, 2013, 2013 CPD ¶ 163 at 3-4.

For example, Booz Allen argued, among other grounds, that the agency's evaluation of its proposal under the past performance factor was unreasonable because it understated the relevance of Booz Allen's past performance references. *Booz Allen Hamilton II*, Protest at 16-21; *Booz Allen Hamilton II*, Comments & Supp. Protest at 32-40. Booz Allen further argued that GSA engaged in misleading and unequal discussions by informing Booz Allen that the agency considered its past performance references more relevant than the agency rated them in the final evaluation and by providing less information to Booz Allen about its past performance references than it proved to GDIT during discussions. *Booz Allen Hamilton II*, Protest at 21-23; *Booz Allen Hamilton II*, Comments & Supp. Protest at 40-44. Booz Allen further contended that these errors, and other evaluation errors under the other non-price factors, impacted the reasonableness of the best-value determination because GSA unreasonably concluded that Booz Allen and GDIT were equal under the past performance factor and equal overall for the non-price evaluation factors, which improperly limited GSA's comparative assessment of the proposals.

Booz Allen's arguments pertained to the reasonableness of the agency's evaluation of its proposal, which are part of Booz Allen's clearly meritorious protest grounds challenging the best-value determination and tradeoff analysis. We find that all Booz Allen's protest grounds share common factual and legal bases and we conclude that they are sufficiently interrelated such that severance is not appropriate here. Accordingly, we recommend that the requester be reimbursed for the costs of filing and pursuing these challenges.

Booz Allen Hamilton I

We next turn to the company's request for costs associated with filing its initial protest, *Booz Allen Hamilton I*. Booz Allen contends it was "put in the position of filing two separate protests only because the agency declined to clearly confirm that Booz Allen's required debriefing remained open pending the agency's responses to Booz Allen's debriefing questions." Req. for Costs at 4. After GSA answered Booz Allen's post-debriefing questions and informed Booz Allen that the debriefing was closed, the company filed *Booz Allen Hamilton II*. Booz Allen contends that this protest was substantially the same as the initial protest and incorporated "only minor changes" to account for information learned from the agency's responses. Comments at 7. As a result, the requester asserts that most of the effort required to file its protests was reflected in its *Booz Allen Hamilton I* protest. *Id.* at 8. Moreover, Booz Allen asserts that it voluntarily withdrew *Booz Allen Hamilton I* because the agency indicated its preference to proceed under the *Booz Allen Hamilton II* protest, rather than consolidating the two protests and proceeding under the initial protest. Req. for Costs at 4; see also Email from GSA dated September 20, 2021.

GSA argues that the initial protest filing would have been dismissed by our Office as premature and it was unnecessary because Booz Allen should have understood from the solicitation that its debriefing would remain open until Booz Allen received GSA's responses to the post-debriefing questions. Resp. to Req. for Costs at 5. GSA responds further that Booz Allen voluntarily withdrew its protest and that our Office did not indicate in our "dismissal" that any protest grounds in *Booz Allen Hamilton I* were clearly meritorious; therefore, the agency argues, Booz Allen should not be able to recover any costs associated with filing its initial protest, because that is not the protest that GAO found to be clearly meritorious.⁷ *Id.* GSA also contends that Booz Allen's request for costs should be dismissed as untimely because it was not raised within a reasonable time after *Booz Allen Hamilton I* was closed. *Id.* at 4-5.

Here, we find no basis to recommend reimbursement of Booz Allen's costs of pursuing its initial protest, *Booz Allen Hamilton I*. Notwithstanding the atypical circumstances that led Booz Allen to file and then withdraw the initial protest, our Office does not recommend reimbursement of costs for withdrawn protest grounds. *Odyssey Sys. Consulting Grp., Ltd.--Costs*, B-419730.5, Sept. 30, 2021, 2021 CPD ¶ 335 at 7; see, e.g., *Hughes Coleman JV--Costs*, B-417787.4, Apr. 15, 2020, 2020 CPD ¶ 250 at 4 (denying costs where protest grounds were withdrawn); *Spry Methods, Inc.--Costs*, B-417800.3, Feb. 14, 2020, 2020 CPD ¶ 83 at 10 (granting costs for all protest grounds except for the withdrawn ground).

Request for Costs for Pursuing Cost Recommendation

Finally, we recommend that Booz Allen be reimbursed the reasonable costs of preparing and pursuing its request for a cost recommendation for *Booz Allen Hamilton II*; specifically, the costs associated with filing B-420116.5. We have previously recognized that such costs are reimbursable where, as here, the request is timely filed, and the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. *Voith Hydro, Inc.--Costs--Recon.*, B-416243.5, Jan. 31, 2020, 2020 CPD ¶ 41 at 4-5. Conversely, we do not recommend reimbursement of Booz Allen's requests for costs under B-420116.4 because those costs are associated with the withdrawn protest, *Booz Allen Hamilton I*.

RECOMMENDATION

As explained above, the agency has conceded Booz Allen's request for protest costs for its challenges to the agency's best-value determination and tradeoff analysis for *Booz Allen Hamilton II*. We also conclude that the other, unsuccessful protest grounds in *Booz Allen Hamilton II* were inextricably intertwined with the allegations in that protest. Accordingly, we recommend that the agency reimburse Booz Allen the reasonable costs

⁷ As noted above, GSA incorrectly designated our Confirmation of Withdrawal as a GAO decision dismissing protest grounds.

for filing and pursuing all protest grounds for *Booz Allen Hamilton II*, B-420116.2; B-420116.3, and its request for costs under B-420116.5, to include attorneys' fees.

Booz Allen should submit its certified claim, detailing the time spent and costs incurred, directly to the agency within 60 days of its receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The request is granted in part and denied in part.

Edda Emmanuelli Perez
General Counsel