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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Professional Security Corporation - Costs

File: B-407022.5

Date: March 10, 2014

Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for the protester.

Elise Harris, Esq., Department of Health and Human Services, Centers for Disease Control and Prevention, for the agency.

Robert T. Wu, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation that protester be reimbursed the costs associated with filing and pursuing a protest is denied where the agency promptly took corrective action in response to a supplemental protest and the original protest was not clearly meritorious.

DECISION

Professional Security Corporation (PSC) requests that our Office recommend that it be reimbursed the costs of filing and pursuing a protest challenging the award of a contract to American Eagle Protective Services Corporation (AEPS) by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), under request for quotations (RFQ) No. 2012-Q-14617 for security guard services at various locations in and around Atlanta, Georgia.

We deny the request.

BACKGROUND

The RFQ requested quotations to provide security guard services for the CDC's facilities in the greater Atlanta, Georgia metropolitan area. RFQ at 19. Under the RFQ's best value evaluation and award scheme, quotations were to be evaluated based on an assessment of technical merit, past performance and price, with the non-price factors being more important than price. Id. at 64-65. The agency made

award to AEPS, finding that its quotation represented the best value to the government.

PSC filed a protest with our Office on June 7, 2013, challenging the CDC's decision to award a contract to AEPS on numerous grounds. PSC challenged the agency's evaluation of proposals under the RFQ's technical evaluation scheme. PSC also challenged the agency's evaluation of AEPS's proposal under the past performance and price factors. Finally, the protester argued that the agency failed to engage in meaningful discussions with it regarding its price.

The agency submitted its report on July 5, contesting each of the protest grounds alleged by PSC. On July 15, PSC submitted a consolidated filing comprised of both its comments to the agency report and numerous supplemental grounds of protest.

On July 17, the agency notified our Office of its intent to take corrective action and requested that we dismiss the protest. The agency's notice stated:

Based on issues newly raised in the Supplemental Protest, the Agency has discovered irregularities in the evaluation and selection process for this procurement. Due to these issues, the Agency intends to take corrective action in this case.

We dismissed the protest because the agency's corrective action rendered it academic. PSC's request for a recommendation that it be reimbursed its protest costs followed our dismissal of the protest.

DISCUSSION

PSC requests that our Office recommend that it be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. Protester's Request at 3. The protester asserts that the agency unduly delayed taking corrective action in response to the firm's clearly meritorious initial protest. Id. Further, PSC argues that it is entitled to its protest costs for all issues raised in both its initial and supplemental protests because, according to the protester, all of the issues in both protests were related to the same core protest facts, and there were no severable grounds of protest. Id. at 4.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs if, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2013); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. A prerequisite to our recommending that the protester be reimbursed its

protest costs where a protest has been settled by corrective action is that the protest must have been clearly meritorious. Apptis Inc.--Costs, B-402146.3, Mar. 31, 2010, 2010 CPD ¶ 123 at 4. A protest is clearly meritorious where a reasonable agency inquiry into the protester's allegations would reveal facts showing the absence of a defensible legal position. Yardney Technical Prods., Inc.-Costs, B-297648.3, Mar. 28, 2006, 2006 CPD ¶ 65 at 4.

We decline to recommend that PSC be reimbursed its protest costs here. With respect to the supplemental protest, we decline to recommend reimbursement of PSC's costs because the agency took corrective action prior to the date set for it to respond to the supplemental protest. Under these circumstances, we view the agency's action as prompt and will not recommend the reimbursement of costs. LGS Innovations LLC, B-405932.2, Apr. 26, 2012, 2012 CPD ¶ 147 at 2.

We also decline to recommend reimbursement of PSC's protest costs associated with its original protest because the original protest was not clearly meritorious. We have reviewed all of PSC's original protest allegations as well as the underlying record and conclude that PSC's original protest was not clearly meritorious. We discuss two of PSC's arguments for illustrative purposes.

With respect to its challenge of the agency's price evaluation of the awardee's proposal, PSC argued that, because the solicitation stated that price would be evaluated to ensure a proper balance throughout the base and option periods, the agency was required to conduct a price realism analysis. However, a review of the solicitation does not support the protester's position. In particular, the language cited by the protester does not impose an obligation on the part of the agency to evaluate prices for realism. See Dyncorp International LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9 (price realism evaluation only required where (1) the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) the RFP states that a proposal can be rejected for offering low prices).

PSC's challenge to the adequacy of the agency's discussions also lacked merit. In this regard, PSC argued that discussions were not meaningful because the agency failed to disclose to PSC that its price was too high. However, an agency is not required to discuss an offeror's higher price where the price is not determined to be unreasonable, such that the proposal is unacceptable for award. DeTekion Security Systems, Inc., B-298235, B-298235.2, July 31, 2006, 2006 CPD ¶ 130 at 13. There is no evidence in the record that PSC's price was considered unreasonable.

The request is denied.

Susan A. Poling
General Counsel