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## Decision

**Matter of:** Erickson Helicopters, Inc.--Costs

**File:** B-410787.4

**Date:** September 4, 2015

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David M. Nadler, Esq., Justin A. Chiarodo, Esq., and Stephanie M. Zechmann, Esq., Dickstein Shapiro LLP, for the protester.  
Robert B. Neill, Esq., Department of the Army, for the agency.  
Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Request for recommendation that agency reimburse costs for filing and pursuing protest is denied where the protest was rendered academic for reasons unrelated to the underlying protest allegations.

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### DECISION

Erickson Helicopters, Inc. (Erickson), of McMinnville, Oregon, requests that our Office recommend that it be reimbursed the costs of filing and pursuing its protest of the Department of the Army's award of a contract to Air Center Helicopters, Inc., of Fort Worth, Texas, under request for proposals (RFP) No. W912D0-14-R-0002, for air medical evacuation (MEDEVAC) services.

We deny the request.

### BACKGROUND

The solicitation sought proposals to provide, for a base period of 12 months with two 1-year options, aerial medical evacuation (MEDEVAC) services in Alaska with rotary wing aircraft, and required that the successful offeror be prepared to perform services 24 hours a day, 7 days a week, 365 days a year without any lapse in service. RFP at 8-9. The solicitation also informed offerors that the MEDEVAC service provider could be required to land at isolated un-surveyed landing sites and ranges, and that during night operations, pilots would be required to use night vision devices to facilitate operations. RFP at 9 The RFP required that the successful offeror be prepared to provide additional support helicopter services, as required,

such as range support, environmental survey support, and general mission support in other areas. Id. Award was to be made to the offeror submitting the lowest-priced, technically-acceptable proposal. RFP at 95.

Upon learning of the award to Air Center, Erickson and another offeror protested the award. Erickson filed its initial protest on November 12, 2014. The Army filed its agency report on December 12, and Erickson filed its comments and a supplemental protest on December 22. GAO established a due date of January 8 for the agency report responding to the supplemental protest.

On January 2, the agency informed our Office that its requirements had changed, and that the Army intended to resume performance of MEDEVAC services itself, beginning April 1, 2015. Army Request for Dismissal at 1. As a result, the agency canceled the solicitation and terminated the contract awarded to Air Center. We thereafter dismissed Erickson's protests as academic. Erickson Helicopters, Inc., B-410787, B-410878.3, Jan. 8, 2015. Erickson thereupon requested that our Office recommend that the agency reimburse the protester its reasonable costs of filing and pursuing the protest.

## DISCUSSION

Erickson asserts that the recovery of protest costs is warranted here because the Army took corrective action in response to Erickson's clearly meritorious protest. The Army contends that its decision to cancel the solicitation and perform the MEDEVAC services in-house was unrelated to Erickson's protest, and therefore did not constitute corrective action in response to a protest. Agency Response to Cost Claim at 2. The agency maintains that it did not take corrective action because it concluded that any of Erickson's protest arguments had merit, but instead chose to cancel the RFP because it concluded that it could perform the contract requirements in-house. Agency Response to Cost Claim at 4-6, 15.

Where a procuring agency takes corrective action in response to a protest, we may recommend that the agency reimburse the protester its protest costs where, 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 a protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. 4 C.F.R. § 21.8(e); CACI Technologies, Inc.--Costs, B-407923.3, Aug. 13, 2014, 2014 CPD ¶ 321 at 4; Information Ventures, Inc.--Costs, B-294580.2 et al., Dec. 6, 2004, 2004 CPD ¶ 244 at 2-3.

We have held that where an agency takes action that renders a protest academic for reasons unrelated to the protest allegations, the agency's action does not constitute corrective action, that is, the agency action does not indicate that the agency recognizes the merit of the protest and is taking the action to remedy the impropriety identified by the protester. Accordingly, in such circumstances, there is

no basis to award costs. A-Ability Medical Equipment, Inc.--Costs, B-403256.3, Apr. 4, 2011, 2011 CPD ¶ 81 at 3; Digital Sys. Group, Inc.--Costs, B-257835.2, Apr. 3, 1995, 95-1 CPD ¶ 173 at 2; Loral Fairchild Corp.--Costs, B-251209.2, May 12, 1993, 93-1 CPD ¶ 378 at 2-3.

For example, in Loral Fairchild Corp.--Costs, supra, due to delays in the procurement process brought about by several protests, the agency eventually became able to perform the work in-house, and therefore canceled the solicitation. Id. at 2. We found that, while the agency was aware of its in-house capability when the solicitation was issued, the record showed that the cancellation was precipitated by the probable impact of the delay that would likely result from the processing of the protest. Id. Therefore, we found that since the cancellation was based upon the agency's assessment of the impact of the delay associated with the protest rather than upon the merits of the protest arguments, the cancellation did not constitute corrective action. Id.

Here, the record supports the agency's position that the decision to cancel the solicitation and perform the MEDEVAC services in-house was unrelated to the merits of Erickson's protest. In this regard, on January 22, 2014, the Army lifted a previous restriction on performing certain MEDEVAC services in house. Agency Response to Cost Claim at 5; Agency Report (AR), Tab 43, ALARACT 019-2014, Utilization of Army Medical Evacuation Aircraft in Support of Installation Training Areas. The memorandum lifting this restriction stated that reductions in operational requirements had resulted in increased availability of Army aeromedical evacuation assets available for installation MEDEVAC support. AR, Tab 43, ALARACT 019-2014, Utilization of Army Medical Evacuation Aircraft in Support of Installation Training Areas, at 1. Therefore, beginning on October 1, 2014, Army commands, Army service component commands, and direct reporting units were authorized to use their aeromedical evacuation aircraft for MEDEVAC services of injured personnel. Id. The memorandum further stated that contract MEDEVAC services were authorized to replace Army services "as needed or when deemed the most fiscally prudent option for a particular training area." Id. (emphasis omitted). The memorandum provided that installation senior commanders, in coordination with installation management command garrison leadership, were to determine MEDEVAC support requirements and Army MEDEVAC availability at their installations, but stated that there was a preference for Army performance of these services. Id. at 2.

On April 7, 2014, the Senior Army Commander, I Corps, directed that the U.S. Army Alaska (which includes the areas covered by the solicitation here) use contract MEDEVAC services until Army organization and equipment was ready to be used to perform the MEDEVAC services, on or about October 1, 2015. AR, Tab 45, Operation Order 315-14, Installation MEDEVAC Support, at 2. The memorandum authorized the use of contractors to perform this service "until assumption of mission as needed." Id.

In a series of e-mail messages in September 2014, Army personnel discussed the date on which MEDEVAC services would transition from contractor personnel to Army personnel. AR, Tab 46, E-mail Messages. One option discussed was a contract from October 1, 2014 to April 2015, with an option period from April 2015 to October 1, 2015. Id. at 3. However, on September 19, an Army warrant officer sent an e-mail to other Army personnel stating that Army personnel would assume MEDEVAC duties on October 1, 2015, and that the Army would award a contract for MEDEVAC services to begin on November 1, 2014. Id. at 2.

On December 8, 2014, however, the Chief of Staff, U.S. Army Pacific, signed a memorandum detailing the transition of MEDEVAC services in Hawaii and Alaska. Specifically, the memorandum stated that Army Alaska MEDEVAC crews would be able to assume MEDEVAC support starting on April 1, 2015.<sup>1</sup> AR, Tab 39, Memorandum to Commander, US Army Installation Management Command, at 1. On December 29, the Regional Contracting Office, Alaska, received the December 8 memorandum regarding transition of MEDEVAC services beginning April 1, 2015. AR, Tab 47, Dec. 29 E-mail to Chief, Resource Management Office, Fort Wainwright, at 1. Shortly thereafter, on January 2, 2015, the agency submitted a request for dismissal of the protests, stating that the agency was canceling the solicitation because it planned to perform the MEDEVAC services in-house beginning April 1.<sup>2</sup>

Based on this record, we find that the cancellation of the solicitation generally resulted from a change in overall Army policy occasioned by the increased availability of Army aeromedical evacuation assets, and with respect to MEDEVAC services in Alaska, the agency's assessment that the Army could begin performance of MEDEVAC services by Army personnel by April 1, 2015. Although the protester asserts that the Army's decision to accelerate the date on which it would take over performance of the services from October 1, 2015 to April 1, 2015 could only have been the result of Erickson's protest, Cost Claim at 3, the record shows that the Army had previously decided to begin performing MEDEVAC services as soon as the requisite assets were available. Indeed, even prior to the filing of the protests, Army personnel had indicated an ability to begin performing the MEDEVAC services by April 2015. AR, Tab 46, E-mail Messages, at 3. Although this option appeared to have been initially rejected, the December 8 memorandum from the Chief of Staff, U.S. Army Pacific, stating that Army Alaska

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<sup>1</sup> The memorandum stated that Hawaii crews would assume MEDEVAC services on June 23, 2015.

<sup>2</sup> When the award was initially protested, the Army awarded a bridge contract to the incumbent, Erickson, through March 31, 2015. AR, Tab 49, Army Notice of Corrective Action and Request for Dismissal, at 1.

MEDEVAC crews would be able to assume MEDEVAC support starting on April 1, 2015, was consistent with the overall trend in Army policy in this regard. We find nothing in the record to indicate that the cancellation of the solicitation was anything other than the result of the agency policy for the Army to begin performing MEDEVAC services. Since the agency action that rendered the protests academic was unrelated to the protest allegations, the cancellation here did not constitute corrective action.

The request is denied.

Susan A. Poling  
General Counsel