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# Decision

**Matter of:** MHM Innovations, Inc.--Costs

**File:** B-413985.3

**Date:** September 7, 2017

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## DIGEST

Request for recommendation of reimbursement of protest and bid and proposal preparation costs following corrective action is denied where the record does not establish that the agency unduly delayed taking corrective action or that the protest was clearly meritorious.

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## DECISION

MHM Innovations, Inc., of Fairfax, Virginia, requests that we recommend reimbursement of the reasonable costs it incurred in filing and pursuing a protest challenging the corrective action taken by the agency under request for quotations (RFQ) No. ID11160027, issued by the General Services Administration (GSA) for technical support services. MHM also requests reimbursement for proposal preparation costs.

We deny the request.

## BACKGROUND

On July 22, 2016, GSA issued the RFQ to small business holders of Federal Supply Schedule 70 contracts seeking quotations for technical support services. After evaluating the quotations, on September 29, GSA issued a task order to MHM. On October 11, Intelligent Waves LLC filed a protest with our Office challenging the agency's determination that Intelligent Waves' offer was technically unacceptable. As a result of the protest, GSA issued a stop work order to MHM. On October 19, GSA advised our Office that it would take corrective action by reviewing the technical and price evaluations, and would make any necessary changes to the evaluations and

ratings as well as the best-value determination and award decision. Req. for Dismissal (B-413985.1), Oct. 19, 2016, at 1. Accordingly, our Office dismissed the protest as academic. Intelligent Waves LLC, B-413985, Oct. 21, 2016 (unpublished decision).

On March 15, 2017, GSA issued an amendment to the RFQ. As amended, the RFQ provided a due date for receipt of questions by March 20, and a proposal due date of April 5. RFQ amend. 0005, at 1. MHM submitted questions to the agency on March 20; GSA never responded to the questions. MHM Protest (B-413985.2) at 15 n.10; Req. for Costs at 3. On March 22, MHM also sent a letter to the contracting officer regarding communications it believed had taken place between GSA and Intelligent Waves after Intelligent Waves' protest had been dismissed, and requested that the agency investigate whether a Procurement Integrity Act violation had occurred. MHM Protest (B-413985.2) at 24; Req. for Costs at 3.

On March 23, MHM filed a protest with our Office challenging the corrective action taken in response to Intelligent Waves' protest, asserting that the corrective action was unreasonable because it was not designed to rectify any impropriety in the procurement and was not necessary to ensure a fair and impartial competition. MHM Protest (B-413985.2) at 18-19. MHM argued that the corrective action taken by the agency was inappropriately tailored to avoid any future protest by Intelligent Waves, and further alleged that GSA and Intelligent Waves had met during the corrective action period, raising independent concerns about the integrity of the procurement. Id. at 19-24. MHM also challenged the terms of the amended RFQ. According to MHM, the amended RFQ was significantly different from the RFQ as initially issued and, among other things, improperly: (1) reduced the scope of work; (2) eliminated key personnel requirements; (3) changed the basis of award from a best-value tradeoff to lowest-priced, technically-acceptable; (4) lowered the standard for technical acceptability; (5) changed the contract type from a hybrid fixed-price and time-and-materials to simply fixed-price; and (6) contained other internal inconsistencies and defects. Id. at 25-30.

GSA did not suspend or extend the deadline for proposal submission, and MHM submitted a proposal by the April 5 deadline. Req. for Costs at 3-4. Prior to the deadline set by our Office for GSA to file its report, GSA advised that the agency would take corrective action by terminating the task order awarded to MHM and cancelling the procurement, and requested that our Office dismiss the protest. Req. for Dismissal (B-413985.2), Apr. 19, 2017, at 1. GSA's actions rendered the protest academic and our Office dismissed the protest. MHM Innovations, Inc., B-413985.2, Apr. 25, 2017 (unpublished decision). On April 28, MHM filed this request that our Office recommend reimbursement of protest and bid and proposal preparation costs.

## DISCUSSION

MHM asserts that its protest was clearly meritorious because it was unreasonable for the agency to amend the RFQ. Request for Costs at 4-5. MHM argues that its protest and proposal costs could have been avoided if the agency had simply reevaluated

proposals and made a new selection decision as stated in its request for dismissal in response to Intelligent Waves' protest or if the agency had suspended the quotation due date after MHM filed its protest. Id. at 5-7.

GSA responds that following dismissal of Intelligent Waves' protest, the agency identified numerous aspects of the procurement that necessitated change, correction or clarification, and resulted in the RFQ amendment. Response to Req. for Costs at 3. GSA refutes MHM's assertions that the amended RFQ contained numerous defects and argues that this protest ground was not clearly meritorious. Id. GSA further states that MHM's allegations regarding procurement integrity were new allegations raised with respect to the procurement, and resulted in the agency's initiation of an investigation and the decision to take corrective action in response to the protest. Id.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs where, based on the record, 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. 4 C.F.R. § 21.8(e); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 6. A protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. Triple Canopy, Inc.--Costs, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3. With respect to the promptness of the agency's corrective action under the circumstances, we review the record to determine whether the agency took appropriate and timely steps to investigate and resolve the impropriety. See Chant Eng'g Co., Inc.--Request for Costs, B-274871.2, Aug. 25, 1997, 97-2 CPD ¶ 58 at 4. While we usually consider corrective action to be prompt if taken before the due date for the agency report responding to the protest, we generally do not consider it to be prompt where it is taken after that date. Glen Mar Constr., Inc.--Costs, B-410603.4, Apr. 5, 2016, 2016 CPD ¶ 107 at 6. The fact that an agency decides to take corrective action does not establish that a statute or regulation has been violated. Information Ventures, Inc.--Costs, B-407478.3, Apr. 5, 2013, 2013 CPD ¶ 95 at 3.

Here, we have no basis to conclude that the agency unduly delayed taking corrective action in response to a clearly meritorious protest. As discussed above, GSA's corrective action took place prior to the deadline set by our Office for the agency to file its report. Accordingly, we view the corrective action as prompt. See Glen Mar Constr., Inc.--Costs, supra. Moreover, the protest grounds were not clearly meritorious. Even where an agency has filed a report, we do not regard a protest as clearly meritorious where resolution of the protest requires further record development to complete and clarify the record. See e.g., American Sys. Corp.; BAE Sys. Info. Solutions, Inc.--Costs, B-408386.5, B-408386.7, Dec. 9, 2015, 2015 CPD ¶ 387 at 3; Boston Harbor Dev. Partners, LLC--Costs, B-404614.5, Feb. 17, 2012, 2012 CPD ¶ 74 at 2-3. Since MHM's protest allegations would have required further development of the record to resolve them, we cannot conclude that they were clearly meritorious.

MHM also argues that it is entitled to bid and proposal costs because GSA's failure to suspend the April 5 proposal due date, in light of its protest, forced it to unnecessarily incur these costs. Req. for Costs at 6-7. GSA responds that MHM never requested that the contracting officer extend the due date for receipt of quotations. Response to Req. for Costs at 5. GSA further argues that it first became aware of the procurement integrity allegations when MHM filed its protest on March 23, and was unable to determine in such a short time whether to extend the due date or to cancel the procurement prior to the solicitation closing date. Id. GSA argues that it appropriately cancelled the solicitation when its investigation of the allegations was completed on April 19. Id.

The imposition of costs is not intended as an award to prevailing protesters or as a penalty to the agency, but rather, is designed to encourage agencies to take prompt action to correct apparent defects in a competitive procurement. See Takota Corp.--Costs, B-299600.2, Sept. 18, 2007, 2007 CPD ¶ 171 at 3. Our Office has generally recommended recovery of bid and proposal preparation costs only in instances where the protester has been unreasonably excluded from competition and where other remedies as enumerated in our regulations are not appropriate. See SCB Solutions, Inc.--Recon., B-410450.2, Aug. 12, 2015, 2015 CPD ¶ 255 at 5 (recommending reimbursement of quotation preparation costs where delivery order was fully performed and the agency did not plan to resolicit its requirements). As discussed above, since the agency took prompt corrective action in response to MHM's protest and the protest was not clearly meritorious, there is no basis for us to recommend reimbursement of MHM's bid and proposal preparation costs.

The request is denied.

Susan A. Poling  
General Counsel