



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

## Decision

**Matter of:** Williamson County Ambulance Service, Inc.—Costs

**File:** B-293811.4

**Date:** September 16, 2004

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Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.  
Phillipa L. Anderson, Esq., Dennis Foley, Esq., and Philip Kauffman, Esq.,  
Department of Veterans Affairs, for the agency.  
Henry J. Gorczycki, Esq., and David A. Ashen, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### **DIGEST**

Government Accountability Office declines to recommend that protester be reimbursed its protest costs where the agency promptly took corrective action in response to a supplemental protest.

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### **DECISION**

Williamson County Ambulance Service, Inc. requests that we recommend that it be reimbursed the costs of filing and pursuing its protest of the Department of Veterans Affairs' (VA) award of a contract to Mercy Regional Ambulance Service, Inc., under solicitation No. V15-04-0026, for ambulance services for the VA Medical Center, Marion, Illinois, and surrounding community based outpatient clinics.

We deny the request.

On March 10, 2004, Williamson filed an initial protest with our Office challenging the agency's evaluation of proposals and the subsequent source selection decision. Williamson also asserted that Mercy's proposal should have been rejected as technically unacceptable, although it did not explain why this was so. On April 9, the agency submitted a report in which it disputed the initial protest arguments and otherwise defended the agency's source selection decision.

In a filing with our Office on April 19, Williamson both furnished comments on the agency report and raised additional protest grounds. Among the new protest allegations raised by the April 19 submission were Williamson's assertion that Mercy's proposal was unacceptable because Williamson had failed to timely

acknowledge a material solicitation amendment, and because the proposal had been submitted by facsimile in violation of a solicitation prohibition on facsimile submissions. On April 21, Williamson filed a second supplemental protest raising additional protest issues.

By notice of April 21, our Office requested the agency to submit a report on the new protest issues apparent in Williamson's comments/supplemental protest and in Williamson's second supplemental protest. This supplemental report was due on May 3.

By letter dated April 29, VA notified our Office that, in lieu of filing a report on the supplemental protests, it would take corrective action, including reviewing the agency's requirements, amending the solicitation as necessary, conducting discussions with offerors in the competitive range, and requesting revised proposals. The agency indicated that its corrective action was not taken in response to Williamson's initial protest, but instead was taken in response to the supplemental protests. The agency specifically noted that Williamson had first raised the issues concerning acknowledgment of a solicitation amendment and facsimile transmission of proposals in its supplemental protests. Agency Corrective Action Letter at 2. In view of the agency's corrective action, our Office dismissed all of Williamson's protests as academic.

On May 17, Williamson filed this request for costs. Williamson notes that because the agency defended against the initial protest, the protester incurred the costs of preparing and submitting comments on the agency report. Williamson asserts that a reasonable inquiry into Williamson's initial protest would have shown that the agency lacked a defensible legal position.

Our Office may recommend that an agency reimburse a 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 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) (2004); Shindong-A Express Tour Co., Ltd.—Costs, B-292459.3, Mar. 25, 2004, 2004 CPD ¶ 75 at 5. Our rule 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. Professional Landscape Mgmt. Servs., Inc.—Costs, B-287728.2, Nov. 2, 2001, 2001 CPD ¶ 180 at 5.

Here, the agency's notice of corrective action stated that the agency was taking corrective action in response to supplemental protest issues, and specifically identified two supplemental protest issues—failure to acknowledge a material amendment and violation of the prohibition against facsimile submissions. Williamson first raised these protest grounds on April 19, and within 10 days the agency announced its corrective action, well before May 3, the due date for the

agency report on the supplemental protests. Since the agency did not submit a report on these supplemental protest issues, the protester did not expend unnecessary time and resources to make further use of the protest process in order to obtain relief on these issues. See J.A. Jones Mgmt. Servs., Inc.--Costs, B-284909.4, July 31, 2000, 2000 CPD ¶ 123 at 4 n.2 (corrective action taken before due date for agency report on supplemental protest is prompt).

Although Williamson argues that the agency should have been aware of these defects simply by examining Mercy's proposal in response to the initial protest, the promptness of an agency's actions is measured relative to the time when the protester identifies the issue that prompts the corrective action. Where, as here, a protester introduces different issues in multiple submissions to our Office, the promptness of the agency's corrective action is not measured from the protester's initial protest, if that protest did not identify the issue on which the agency based its corrective action. See QuanTech, Inc.--Costs, B-291226.3, Mar. 17, 2003, 2003 CPD ¶ 62 at 3; J.A. Jones Mgmt. Servs., Inc.--Costs, supra.

We deny the request for costs.

Anthony H. Gamboa  
General Counsel