



Decision

Matter of: Knowlogy Corporation--Costs

File: B-416208.2

Date: August 13, 2018

Scott R. Williamson, Esq., Williamson Law Group, LLC, for the protester.
Kathleen K. Barksdale, Esq., General Services Administration, for the agency.
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participated in the preparation of the decision.

DIGEST

Request for reimbursement of protest costs is denied where the agency did not unduly delay taking corrective action in the face of a clearly meritorious protest.

DECISION

Knowlogy Corporation, a small business located in Vienna, Virginia, requests that our Office recommend that the General Services Administration (GSA) reimburse the firm the reasonable costs of filing and pursuing its protest of request for proposals (RFP) No. ID03180005, which GSA issued to procure cyber-security and information technology training services for Department of Defense activities in Europe.

We deny the request.

BACKGROUND

Knowlogy (the incumbent) filed its protest on March 30, 2018, contending that GSA was improperly conducting the procurement as a negotiated acquisition under Federal Acquisition Regulation (FAR) part 15, because the services were previously procured as a commercial item acquisition under FAR part 12. Protest at 1-8. In this respect, Knowlogy argued that the RFP was inconsistent with section 848 of the National Defense Authorization Act for Fiscal Year (FY) 2018 (NDAA), Pub. L. No. 115-91, 131 Stat. 1283, 1487 (Dec. 12, 2017), and the Act's implementing regulations at subpart 212.70 of the Defense Federal Acquisition Regulation Supplement (DFARS). Id.

On April 25 (7 days prior to the due date for submission of an agency report), GSA informed the parties that it intended to take corrective action in response to the protest. Notice of Corrective Action. GSA stated that it would reevaluate the terms of the procurement to address the protester's concerns. Id. GSA further stated that based on the reevaluation, the agency may, if necessary, amend or cancel the procurement in light of the agency's needs and to ensure full compliance with the FAR and DFARS. Id.

On April 30, our Office dismissed the protest because GSA's corrective action rendered the protest academic. Knowlogy Corp., B-416208, Apr. 30, 2018 (unpublished decision).

Knowlogy now requests that our Office recommend the protester be reimbursed for its costs of filing and pursuing the protest, including attorney's fees. Req. at 1. Knowlogy concedes that "[i]n general, if an agency takes corrective action by the due date for its report in response to a protest, the GAO considers such action to be prompt and will not recommend reimbursement of protest costs." Id. (citing The Sandi-Sterling Consortium--Costs, B-296246.2, Sept. 20, 2005, 2005 CPD ¶ 173). However, Knowlogy urges that the facts and circumstances of its protest indicate that our general rule should not be followed here. Id. at 2. In this respect, Knowlogy points out that prior to filing its protest, it had expressed its concerns regarding the solicitation to GSA on three occasions.¹ Id. at 2-3. According to Knowlogy,

If GSA took timely and appropriate steps to resolve the violation, GSA would have followed the statutory requirements when issuing the solicitation. Subsequently, notwithstanding the clear statutory violation, GSA elected to defend its solicitation even after the violation was again brought to their notice. GSA[']s violation of statutory requirements, despite numerous notifications of the violation, caused Knowlogy to incur the expense of filing [the] protest. These are precisely the expenses the requirement for the agency to take appropriate and timely steps to investigate and resolve the impropriety[,] is intended to avoid.

Id. at 3.

¹ Knowlogy has provided copies of: its February 26 letter to the contracting officer (CO) expressing Knowlogy's concerns and legal opinion regarding the RFP's compliance with the NDAA provision; the CO's March 20 response; subsequent email communications between the two parties; and a question that Knowlogy posed to GSA during a pre-proposal conference with offerors. See Req., attachs. 1-5. Prior to issuing the RFP on March 14, 2018, GSA had issued various presolicitation notices between December 20, 2017, and February 7, 2018, including a request for information, an industry day notice, a draft performance work statement, and responses to questions from interested offerors. See <https://www.fbo.gov/notices/50b9791cb1fa4b541d6ed8fdc7541a4a> (last visited Aug. 9, 2018).

DISCUSSION

Under our Bid Protest Regulations, if an agency decides to take corrective action in response to a protest, our Office may recommend that the agency pay the protester the reasonable costs of filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees. 4 C.F.R. § 21.8(e). This does not mean that costs should be reimbursed in every case in which an agency decides to take corrective action; rather, a protester should be reimbursed its costs where an agency unduly delayed its decision to take corrective action in the face of a clearly meritorious protest. NxGen Process Grp., LLC--Costs, B-406650.2, May 24, 2012, 2012 CPD ¶ 163 at 2.

When an agency takes corrective action on or before the due date set for receipt of the agency report, our Office views such action as prompt and will not recommend the reimbursement of costs. The Sandi--Sterling Consortium--Costs, *supra*, at 2-3; HSQ Tech.--Costs, B-276050.2, June 25, 1997, 97-1 CPD ¶ 228 at 2.

We see no reason to depart from our standard here, notwithstanding that Knowlogy had previously expressed its concerns to GSA regarding the solicitation. The provisions in our Bid Protest Regulations providing for the possibility of a recommendation that costs be reimbursed where an agency takes corrective action in response to a protest with our Office, are not intended to ensure the fairness of agency level processes occurring prior to the protest filing; rather, those provisions are intended to ensure fair treatment of protesters who make substantial investments of time and resources to pursue clearly meritorious protests in this forum. Innovative Techs., Inc.--Costs, B-415810.3, Mar. 12, 2018, 2018 CPD ¶ 107 at 2-3 (citing Dellew Corp., B-410159.4, Feb. 26, 2016, 2016 CPD ¶ 114 at 2; Innovative Logistics Techniques, Inc.--Costs, B-289031.3, Feb. 4, 2002, 2002 CPD ¶ 34 at 5). Even were we to assume that it raised clearly meritorious protest grounds, Knowlogy would not be entitled to reimbursement of protest costs here because it was not required to expend unnecessary costs preparing comments on an agency report since none was filed.² See *id.* (citing, *inter alia*, Singleton Enters. GMT Mech., Joint Venture--Costs, B-310454.3, Mar. 27, 2008, 2008 CPD ¶ 61 at 3-4 (denying request for costs, even though the protester presented a clearly meritorious protest, where the agency did not unduly delay taking corrective action since it did not submit an agency report and the protester was thus not required to expend unnecessary costs preparing comments on a report)).

As stated above, GSA took corrective action in response to the protest before submitting an agency report.³ Therefore, Knowlogy's request does not meet our

² In this respect, we disagree with Knowlogy's assertion that "GSA elected to defend its solicitation" See Req. at 3.

³ We express no views whatsoever on whether the solicitation was inconsistent with, or violated, section 848 of the NDAA for FY 18, or subpart 212.70 of the DFARS.

standard for recommending reimbursement of protest costs. See NxGen Process Grp., LLC--Costs, supra.

The request is denied.

Thomas H. Armstrong
General Counsel