Decision

Matter of: AboutWeb LLC--Protest and Costs

File: B-416116.2

Date: November 9, 2018

Edward J. Tolchin, Esq., Offit Kurman Attorneys at Law, for the protester.
Uri R. Ko, Esq., and Brandon Dell'Aglio, Esq. Social Security Administration, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester’s request for recommendation that agency reimburse costs of filing and pursuing earlier protest due to agency’s alleged failure to proceed with corrective action is denied where agency implementation of corrective action was reasonable.

DECISION

AboutWeb LLC, of Gaithersburg, Maryland, a small business, requests reimbursement of the costs of filing and pursuing its earlier protest that challenged the issuance of a Federal Supply Schedule (FSS) order to IT Concepts Inc., of Vienna, Virginia, under an unnumbered request for quotations (RFQ), issued by the Social Security Administration (SSA), for information technology local area network and desktop support services for the SSA Office of the Deputy Commissioner of Operations, at the SSA headquarters in Woodlawn, Maryland. 2 AboutWeb argues that our Office should

1 As explained in our earlier decision, the solicitation is identified as the RFQ for Information Technology Local Area Network and Desktop Support.

2 When it filed this matter, AboutWeb also protested the agency’s failure to implement the corrective action. While the protest was pending, the SSA completed the corrective action and announced that the new source selection decision had again resulted in an award to IT Concepts. Neither party disputed our suggestion that the protest had become academic, so we dismiss that aspect, Dyna Air Eng’g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132, and address only AboutWeb’s claim of entitlement to reimbursement of its costs.
recommend that the SSA reimburse the protester’s costs of filing and pursuing the earlier protest, and this claim, because the SSA allegedly failed to implement corrective action in a timely manner.

We dismiss the protest and deny the request to recommend reimbursement of costs.

BACKGROUND

The competition at issue was held among firms that had previously been issued SSA Small Business Information Technology blanket purchase agreements, which in turn had been established under those firms’ General Services Administration FSS contracts. On March 2, 2018, the SSA notified AboutWeb (which had been the incumbent contractor up to that point) that the agency had issued the order to IT Concepts. On March 8, AboutWeb filed a protest with our Office challenging the award.

On March 15, SSA submitted a notice that the Associate Commissioner for Acquisition and Grants had issued a determination that continuing performance of the order notwithstanding the pendency of this protest was in the best interests of the agency.

On March 28, counsel for SSA asked our Office to dismiss the protest because it planned to take corrective action by reevaluating the quotations and making a new source selection decision. On April 3, in response to objections to the dismissal of the protest, counsel for the SSA submitted an updated description of the corrective action, stating that “SSA will open discussions, request revised proposals from the offerors, conduct a new evaluation of the proposals, and make a new contract award determination within 120 days of dismissal of the above-referenced protest.” Notice of Corrective Action Letter (Apr. 3, 2018) at 1.

AboutWeb continued to object to the proposed corrective action on multiple bases, including that the corrective action would take longer than necessary, and would allow IT Concepts to continue performing even though the agency’s action in effect disavowed the validity of the underlying source selection decision.3 Our Office dismissed the protest as academic on April 6.

On August 20, AboutWeb inquired about the status of the agency’s corrective action, in response to which, it alleges, the SSA stated that corrective action would still take additional “weeks.” Protest at 2. On August 22, the SSA opened an additional round of discussions with the vendors, inviting them to submit new letters of commitment and staffing plans. Id. On August 23, AboutWeb filed this request for costs, arguing that SSA should reimburse the firm’s protest costs because the agency allegedly failed to

3 In an April 6 conference call with counsel for both parties, SSA explained why it believed the schedule and scope of corrective action are appropriate for producing a valid source selection decision.
take prompt and diligent action to open discussions, evaluate responses, and make the new source selection decision.

While this matter was pending, the SSA announced that it had completed the corrective action and had again selected IT Concepts to receive the order. In a conference call with the parties held by our Office, there was agreement that all of AboutWeb’s protest issues had been rendered academic by the completion of corrective action, so we requested that the SSA respond to AboutWeb’s request for costs. Electronic Protest Docketing System, GAO Docket No. 9 (Minute Entry, Sept. 12, 2018).

PROTEST AND COSTS

AboutWeb argues that the SSA has failed to justify the lengthy time to complete the corrective action. The firm argues that the timing and intent of the reopened discussions were unjustifiable and allegedly provided an ostensible justification for continued delay and for IT Concepts to make a necessary change of personnel. Protest at 2. As a result, About Web argues that the reimbursement of its costs is appropriate because the SSA failed to implement corrective action promptly in response to AboutWeb’s original meritorious protest, and failed to implement the proposed corrective action in a timely fashion, thereby necessitating this further protest. Id. at 3.

The SSA responds that AboutWeb’s protest was not clearly meritorious, and the corrective action was not unduly delayed, although it concedes that the corrective action took 32 days longer than the 120 days originally anticipated. Agency Report at 2. The agency explains that corrective action included carefully reviewing the initial quotations and evaluations, preparation of discussion letters to both vendors, evaluating the revised quotations, initiating the additional round of discussions, evaluating the final revised quotations, and preparing a source selection decision. Id. The SSA argues that its efforts were diligent, and that the additional 32 days beyond the original estimate to complete the corrective action were a “relatively brief delay” and do not justify shifting the protester’s costs to the agency. Id. at 3.

Our Bid Protest Regulations, 4 C.F.R. § 21.8(e), provide that we may recommend that an agency reimburse a protester’s costs of filing and pursuing a protest where the agency decides to take corrective action in response to a protest. We will make such a recommendation, however, only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. CSL Birmingham Assocs.; IRS Partners-Birmingham--Costs, B-251931.4, B-251931.5, Aug. 29, 1994, 94-2 CPD ¶ 82 at 3. 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. Nevertheless, a recommendation for reimbursement is not appropriate where the agency implemented its proposed corrective action by reevaluating proposals, even where the protester then files a protest raising the same arguments, because those circumstances do not demonstrate that the agency failed to

We do not regard the SSA’s efforts to complete corrective action as being unreasonable, reflecting bad faith, or lacking diligence. To the contrary (and assuming for the sake of analyzing these claims that the issues raised in AboutWeb’s original protest were clearly meritorious), the course of events here supports the SSA’s argument that it proceeded to take reasonable steps to performing corrective action--including holding two rounds of discussions—in order to resolve AboutWeb’s protest issues, and with a goal of avoiding additional protests.

In our view, the record thus undercuts AboutWeb’s claim that it was compelled to file this second protest because the SSA had failed to make good faith efforts to resolve the original protest. Although AboutWeb argues that the time taken by SSA to perform corrective action was unreasonable and reflects a lack of diligence or bad faith by the SSA, in comparison to the agency’s statement at the time that corrective action was initiated, we have recognized that an objection to the length of time taken to complete corrective action is not a cognizable basis of protest. Western Star Hosp. Auth., Inc., B-414198.2, B-414198.3, June 7, 2017, 2017 CPD ¶ 183 at 9. AboutWeb has failed to show that the SSA’s course of corrective action justifies recommending that the agency reimburse the protester’s costs and, as noted above, its objections to that the SSA had not completed corrective action are dismissed as academic.

The request for costs is denied.

Thomas H. Armstrong
General Counsel