



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Hope Village, Inc.--Costs

File: B-414342.7

Date: August 30, 2019

Christopher R. Yukins, Esq., Kristen E. Ittig, Esq., and Michael E. Samuels, Esq., Arnold & Porter Kaye Scholer, LLP, for the protester.
Nihar Vora, Esq., Department of Justice, for the agency.
Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation to reimburse costs associated with pursuing a claim at our Office is denied where: (1) the protester submitted its certified claim to the agency while the agency requested reconsideration of our recommendation to reimburse the protester its costs associated with filing and pursuing its protest; and (2) the agency did not unreasonably delay in agreeing to reimburse the protester after our Office issued the decision denying the agency's request for reconsideration.

DECISION

Hope Village, Inc., of Washington, DC, requests our Office recommend that the Department of Justice, Bureau of Prisons (BOP), reimburse Hope Village the costs it incurred in pursuing a claim at our Office and for the costs of filing and pursuing its claim.

We deny the protester's request.

BACKGROUND

On November 13, 2018, Hope Village filed its protest challenging the award of a contract to CORE DC, LLC, for residential re-entry center and home confinement services. The protest challenged the evaluation of both Hope Village's and CORE DC's proposals, the conduct of discussions, and the agency's responsibility determination. On February 21, 2019, we denied or dismissed all of Hope Village's challenges to the evaluation of its proposal, but sustained Hope Village's challenge to the evaluation of

CORE DC's proposal. Hope Village, Inc., B-414342.2 et al., Feb. 21, 2019, 2019 CPD ¶ 86.

The decision first concluded that the agency reasonably evaluated Hope Village's proposal as unsatisfactory. Nonetheless, the decision concluded that Hope Village was an interested party to challenge the evaluation of CORE DC's proposal because the limited record before GAO during the pendency of that protest indicated that CORE DC submitted the only proposal found acceptable for award.¹ Id. at 8. Because Hope Village's challenge to the evaluation of CORE DC's proposal was sustained, one of our recommendations was that the agency reimburse the protester its costs associated with filing and pursuing the protest, including reasonable attorneys' fees. Id. at 11.

On March 1, BOP requested reconsideration of our prior decision, arguing that the determination that Hope Village was an interested party to challenge the evaluation of CORE DC's proposal was based on an error of fact in the decision. Request for Reconsideration at 3-7. In this regard, the agency asserted that information provided in redacted portions of its source selection decision--which it did not disclose to our Office--revealed that there was at least one offeror, other than CORE DC, that the agency found to be acceptable for award. Id. at 4-5. The agency argues that the error of fact and the "information not previously considered" warranted reversal of our prior decision. Id. The agency also requested that our Office reverse our recommendation that the agency reimburse the protester its costs associated with its filing and pursuing its protest. Id. at 1, 7.

On April 15, Hope Village submitted its certified cost claim of \$66,856.97 to the agency. Claim for Protest Costs, attach. A, Certified Cost Claim to Agency.

By decision dated May 21, our Office denied the request for reconsideration concluding that the previously redacted portions of the record did not provide a basis for reconsideration because while the agency had this information, it did not furnish the information in the prior protest proceedings. Department of Justice; Hope Village, Inc.-- Recon., B-414342.5, B-414342.6, May 21, 2019, 2019 CPD ¶ 195 at 5-6. That same day, Hope Village submitted an inquiry to the agency regarding the status of its cost claim. Hope Village again submitted another inquiry on June 3. Claim for Protest Costs, attach. B, Hope Village Inquiry to Agency.

Having received no response from the agency, on June 11, Hope Village filed a request for recommendation for reimbursement of costs with our Office. Request for Reimbursement of Protest Costs. The agency responded on July 15, that it has no

¹ In responding to the protest, the agency chose to provide a redacted version of the record for our review on the basis that because Hope Village did not challenge the evaluation of any offerors other than Hope Village and CORE DC, information pertaining to any other offeror was not relevant. Agency 5-Day Letter.

objections to Hope Village's cost claim of \$66,856.97. Agency Response to Request for Reimbursement of Protest Costs.

On July 18, Hope Village filed its supplemental request, asking that our Office recommend the agency reimburse Hope Village the costs it incurred in pursuing a request for recommendation for reimbursement with our Office. Supplemental Request for Recommendation for Reimbursement of Costs (Supp. Request).

DISCUSSION

Hope Village seeks reimbursement for services and fees associated with pursuing its claim at our Office. In this regard, Hope Village argues that those costs were incurred solely because the agency never responded to the protester's claim after it was submitted on April 15 until three months later when the agency "conceded" to paying the costs associated with filing and pursuing the initial protest (\$66,856.97). Supp. Request.²

The agency acknowledges, that while there was a delay in responding to the cost claim, it was not three months as alleged by Hope Village. In this regard, the agency asserts that Hope Village filed its cost claims after making two inquires during a three week period after our Office denied the agency's request for reconsideration. The agency urges our Office to deny Hope Village's request because, according to the agency, Hope Village could have resolved its cost claim with the agency before filing its claim with our Office. In this regard, the agency represents that during that three week period the agency was working to implement the corrective action recommended by the GAO, as well as trying to identify funds that could be utilized to pay the protester its costs, which, as the agency points out, the agency ultimately did not contest. Agency Response to Supp. Claim.

Our Bid Protest Regulations provide that, in the event that we sustain a protest, we may recommend that the agency pay the successful protester the costs of "[f]iling and pursuing the protest, including attorneys' fees and consultant and expert witness fees[.]" 4 C.F.R. § 21.8(d)(1). Our Regulations also provide that we may recommend reimbursement of the costs of pursuing a claim before our Office. 4 C.F.R. § 21.8(f)(2). This provision is intended to encourage the agency's expeditious and reasonable consideration of a protester's claim for costs. JAFIT Enters., Inc.--Costs, B-266326.2, B-266327.2, Mar. 31, 1997, 97-1 CPD ¶ 125 at 4. We will only make a recommendation for reimbursement of costs associated with pursuing a claim at our Office if it is shown that the agency unreasonably delayed consideration of the claim, or otherwise failed to give it reasonable consideration. AeroSage, LLC--Costs, B-416381.6, Mar. 13, 2019, 2019 CPD ¶ 107 at 6.

² Our Office did not separately docket the protester's supplemental request for recommendation for reimbursement of costs apart from Hope Village's original cost request. Because the agency has agreed to reimburse the protester the entire amount of the protester's cost claim, we view the original request for costs to be academic.

Under the circumstances presented here, we find no basis to recommend the reimbursement of the costs of pursuing this claim at our Office. In this regard, Hope Village submitted its certified claim to the BOP after the agency requested reconsideration of our recommendation that the agency reimburse the protester its costs of pursuing the protest. Given that the agency expressly sought reconsideration of our recommendation to reimburse Hope Village its protest costs, we find that the agency could reasonably defer its consideration of Hope Village's claim until our Office issued a decision resolving the agency's request for reconsideration. See BAE Tech. Servs., Inc.--Costs, B-296699.3, Aug. 11, 2006, 2006 CPD ¶ 122 at 7 (finding that agency could reasonably await the result of Court of Federal Claims litigation filed by the previous awardee challenging the agency's decision to implement corrective action in response to our decision sustaining protest).

Hope Village filed its request for a recommendation for reimbursement of costs with our Office less than three weeks after our Office denied the agency's request for reconsideration. As a result, BOP essentially was not allowed sufficient time to reasonably or promptly negotiate Hope Village's claim before the matter was submitted to our Office. It is also unclear whether the costs sought by Hope Village in its supplemental request were reasonable given that the agency had promptly responded that it had no objection to the initial request for recommendation for reimbursement of costs, and BOP agreed to pay the protester the entirety of its cost claim.

Under these circumstances, we cannot find that the agency unreasonably delayed consideration of Hope Village's claim, and we are provided no basis to recommend reimbursement of the protester's costs of pursuing its claim at our Office. See Voith Hydro, Inc.--Costs, B-416243.4, July 30, 2019, 2019 CPD ¶ 272 at 7; Ace Info Solutions, Inc.--Costs, B-414650.27, May 14, 2019, 2019 CPD ¶ 179 at 6; Cf. CourtSmart Digital Sys., Inc.--Costs, B-292995.7, Mar. 18, 2005, 2005 CPD ¶ 47 at 4 ("Given that [the agency] did not consider or substantively respond to CourtSmart's documented and certified claim until 5 months after it was submitted and only after our Office requested a report on the matter, and given that we have found the bulk of the disputed claimed costs recoverable, we recommend that CourtSmart be reimbursed the costs of pursuing its claim at our Office.").

The request for a recommendation for reimbursement of the costs of pursuing a claim at our Office is denied.

Thomas H. Armstrong
General Counsel