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Decision

Matter of: C.I. Lovell, Inc.

File: B-418935.2

Date: August 21, 2020

Michael S. Bissell, Esq., and Tyler S. Waite, Esq., Campbell & Bissell, PLLC, for the protester.

Alexandra M. Pollack, Esq., Department of the Army, for the agency.

Raymond Richards, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation of reimbursement of the costs of filing and pursuing a protest is denied where the agency did not unduly delay taking corrective action, *i.e.*, the corrective action was taken before the due date for the agency report.

DECISION

C.I. Lovell, Inc., a small business of Harrah, Washington, requests that our Office recommend that it be reimbursed for the costs of pursuing its protest challenging the decision of the Department of the Army, Army Corps of Engineers (Corps) to exclude its quotation from consideration for award under request for quotations (RFQ)

No. W912DW20Q8010 for various equipment and equipment operations services for use at the Mud Mountain Dam Federal Project near Enumclaw, Washington. The requester argues that our Office should recommend reimbursement of costs because the Corps has now taken corrective action in response to C.I. Lovell's protest with our Office, but refused to take action in response to C.I. Lovell's agency-level inquiry, which prompted C.I. Lovell to file a protest with GAO, and incur fees and costs associated with filing and pursuing the protest.

We deny the request.

On July 16, 2020, C.I. Lovell filed a protest with our Office, docketed as B-418935, challenging the Corps's decision to exclude its quotation from award consideration. Five days after the protest was filed, the agency submitted a notice of corrective action and requested dismissal of the protest. Agency Resp. to Req. for Costs at 2. On

July 23, our Office dismissed the protest as academic. *C.I. Lovell, Inc.*, B-418935, July 23, 2020 (unpublished decision).

C.I. Lovell argues that it should be reimbursed for the costs associated with filing and pursuing its protest because the agency refused to take action in response to C.I. Lovell's agency-level inquiry, prompting C.I. Lovell to file a protest with GAO.¹ Req. for Recommendation of Costs at 1; Comments at 1. The Corps requests that our Office not recommend the payment of costs and attorney's fees because the agency did not unduly delay taking corrective action. Agency Resp. to Req. for Costs at 1-2.

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. *Knowlogy Corp.--Costs*, B-416208.2, Aug. 13, 2018, 2018 CPD ¶ 281 at 3. 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. *Id.*; *Career Sys. Dev. Corp.--Costs*, B-411346.10, July 18, 2018, 2018 CPD ¶ 249 at 4; *Innovative Techs., Inc.--Costs*, B-415810.3, Mar. 12, 2018, 2018 CPD ¶ 107 at 2.

We see no reason to depart from our standard here. 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 at GAO; 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. *Knowlogy Corp.--Costs, supra*; *Innovative Techs., Inc.--Costs, supra*, at 2-3. Even were we to assume that it raised clearly meritorious protest

¹ C.I. Lovell also argues "every electronic document filed by the Agency during the protest was either hidden or protected from C.I. Lovell's counsel[.]" Comments at 1. We note that this protest was subject to the terms of a protective order, of which requester's counsel was not yet admitted due to the prompt corrective action of the agency. The purpose of a protective order is to control the treatment of protected information, which includes proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms. 4 C.F.R. § 21.4(a). Contrary to the requester's contention that every document was "hidden or protected," the only document that was filed and marked as protected was the agency's request for dismissal. In this regard, the agency filed its request for dismissal, marked as protected, on July 21. Electronic Protest Docketing System (Dkt.) No. 7. One day later, the agency filed the final redacted version of the request for dismissal, marked as not protected. Dkt. No. 12.

grounds, C.I. Lovell 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. *Knowlogy Corp.--Costs, supra*.

As addressed above, the Corps took corrective action in response to the protest before submitting an agency report. Therefore, C.I. Lovell's request does not meet our standard for recommending reimbursement of protests costs.

The request is denied.

Thomas H. Armstrong
General Counsel