U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: VESEQU, LLC

File: B-424606.3

Date: September 17, 2026

Jason Shadburn for the requester.
Barton B. Evans, Esq., Department of Veterans Affairs, for the agency.
Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation for reimbursement of costs of filing and pursuing a protest is denied where the agency did not delay in taking corrective action.

DECISION

VESEQU, LLC, a service-disabled, veteran-owned small business (SDVOSB) of Los Angeles, California, requests our Office recommend that it be reimbursed for the costs of filing and pursuing its protest challenging its exclusion from the competition under request for proposals (RFP) No. 36C24725R0095, issued by the Department of Veterans Affairs (VA) for oxygen and ventilator services.

We deny the request.

BACKGROUND

The VA issued the solicitation on November 7, 2025, seeking proposals for home oxygen and ventilator services. Req. for Dismissal, exh. 1, RFP at 1.[1] The RFP contemplated the award of a contract to the offeror whose proposal represented the best value to the government considering two evaluation factors, experience and price. *Id.* at 105. Relevant to the protest, the price factor stated that "the government intends to evaluate for price reasonableness each of the unit prices offered in Section B.3[.]" *Id.*

[1] Our citations reference documents in the request for costs and the underlying protest record. Citations refer to the Adobe PDF page number of the referenced documents.

RFP section B.3 included a cost/price schedule and section B.4 included a table that offerors were expected to fill in with unit prices for requested supplies and services. *Id.* at 37.

VESEQU submitted a proposal in response to the RFP. The VA conducted a compliance review and determined that VESEQU failed to comply with the instructions for the RFP's price factor. Req. for Dismissal at 5-6. On May 4, 2026, the agency notified VESEQU that its proposal had been rejected for "improper pricing and not following the instructions[.]" Protest, exh. A, Rejection Letter at 1.

On May 5, VESEQU filed an agency-level protest. Protest, exh. E, Agency-Level Protest at 1. VESEQU challenged the VA's rejection of its proposal, raising various arguments. *Id.* at 3-4. For example, VESEQU argued that the VA should have engaged in clarifications pursuant to Federal Acquisition Regulation part 15, should have waived the pricing discrepancy as a minor irregularity, and contended that the contracting officer treated VESEQU unfairly. *Id.* The VA denied the agency-level protest on June 23. Protest, exh. H, Decision at 3.

On June 25, VESEQU filed the underlying protest with our Office. Protest at 1. VESEQU raised the same grounds as its agency-level protest with some additional allegations. *Id.* at 8-12. For example, in the GAO protest, VESEQU argued that the VA's rejection of its proposal had frustrated the purpose of the Veterans First Contracting Program,[2] and that the VA took too long to issue a decision on the agency-level protest. *Id.* at 11.

On July 9, the VA filed a request for dismissal. In its request, the VA asked our Office to dismiss VESEQU's protest because the VA's rejection of VESEQU's proposal was reasonable and that the pricing discrepancy identified in VESEQU's proposal was a material defect. Req. for Dismissal at 9-13. The agency also addressed VESEQU's other arguments.[3] *Id.* at 14-19.

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[2] Under the Veterans First Contracting Program, contracting opportunities must be set aside for SDVOSB or veteran-owned small business concerns if the VA determines that there is a reasonable expectation that offers will be received from at least two eligible concerns and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127; *Autoflex, Inc.*, B-415926, Apr. 19, 2018, at 1 n.1.

[3] Also on July 9, we asked the VA to submit a declaration by July 13 explaining the solicitation's "unit pricing" requirement. Electronic Protest Docketing System (Dkt.) No. 7 (minute entry). We provided VESEQU with a deadline of July 16 to respond to the request for dismissal. Dkt. 6 (minute entry). VESEQU filed a premature response to the request for dismissal at 9:43 p.m., on July 9. Dkt. 10. We informed VESEQU that the response was received but advised VESEQU to file its response after the VA filed the requested contracting officer's declaration on July 13. Dkt. 10 (GAO Note). The VA filed the requested declaration on July 13, and VESEQU filed a supplemental response to the request for dismissal on July 14. Dkts. 10-11.

On July 15, we declined the agency's dismissal request. In short, we determined that the VA's request for dismissal addressed the merits of VESEQU's protest and therefore dismissal was not appropriate at that juncture (specifically, we stated "the request for dismissal goes to the merits of the question presented.").[4] GAO Notice to Parties, July 15, 2026.

On July 16, VESEQU filed a supplemental protest. There, VESEQU argued that the VA's request for dismissal introduced a new interpretation of the solicitation's price schedule requirement, the VA failed to evaluate VESEQU's proposal for price reasonableness, and the contracting officer's declaration filed in response to GAO's inquiry introduced new inconsistencies into the record. Supp. Protest at 4-7.

On July 22--5 days before the agency report was due--the VA filed a notice of corrective action. The agency explained that its corrective action would include rescinding VESEQU's rejection letter, reevaluating VESEQU's proposal, reviewing the solicitation's price schedule, and issuing a solicitation amendment if necessary. Notice of Corrective Action at 1-2; Clarification of Corrective Action at 1-2. On July 24, we dismissed the protest as academic. *VESEQU, LLC*, B-424606, B-424606.2, July 24, 2026 (unpublished decision). On July 24, VESEQU filed the instant request for a recommendation that it be reimbursed for the costs of filing and pursuing its protest.

DISCUSSION

VESEQU argues that the VA failed to take prompt corrective action in response to a clearly meritorious protest and therefore, GAO should recommend that VESEQU be reimbursed for the costs of filing and pursuing its protest. As discussed below, we find that the VA's corrective action was prompt and therefore do not recommend reimbursement.

Our regulations provide that we may recommend that an agency pay protest costs where the agency decides to take corrective action in response to a protest. 4 C.F.R. § 21.8(e). We will make such a recommendation only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. *Clean Team Janitorial Servs., Inc.--Costs*, B-421822.2, Dec. 6, 2023, at 7.

As a general rule, so long as an agency takes corrective action by the due date of its agency report, we regard the action as prompt and will not recommend reimbursement of protest costs. *Id.* at 9 (corrective action was prompt in a matter involving three underlying protests where corrective action was filed prior to the due date for the agency report in each underlying matter); *C.I. Lovell, Inc.--Costs*, B-418935.2, Aug. 21, 2020, at 2-3 (our bid protest regulations provide for the possibility of a recommendation

[4] In our notice, we offered to allow the VA to use its request for dismissal as its agency report. GAO Notice to Parties, July 15, 2026. The VA declined our offer.

for reimbursement of costs to ensure fair treatment of protesters at GAO and are not intended to ensure fair treatment in agency-level proceedings); *AeroSage, LLC--Costs*, B-417803.2, Oct. 29, 2019, at 3-4 (agency-level protest was of no significance to our determination of whether the agency took prompt corrective action); *GovSmart, Inc.--Protest and Costs*, B-415871.3, B-415871.4, Apr. 19, 2018, at 7 (corrective action was prompt where it was filed prior to the due date of the agency report in a matter involving an agency-level protest and a supplemental protest); *Abhe & Svoboda, Inc.--Costs*, B-412504.2, Apr. 1, 2016, at 3-4 (corrective action was prompt where it followed a colorable but ultimately unsuccessful request for dismissal). Where we determine that an agency's corrective action was prompt, we generally do not decide the issue of whether the protest was clearly meritorious. *See e.g.*, *AeroSage, LLC--Costs*, *supra* at 4 n.4.

VESEQU argues that the agency's corrective action was not prompt for three reasons. Req. for Costs at 6-7. First, the requester asserts that the VA was on notice of VESEQU's protest since May 5, when the agency-level protest was filed. *Id.* at 6. According to the requester, the "multi-form history here" establishes that the VA delayed taking corrective action for 78 days which, according to the requester, was not prompt. *Id.* Second, the requester argues that because the agency filed a request for dismissal before taking corrective action, the corrective action was not prompt.[5] *Id.* Third, the requester contends that it filed four substantive documents into the protest record--the protest; the initial response to the request for dismissal; the supplemental response to the request for dismissal; and the supplemental protest--and argues that the "volume of protester activity here is itself evidence that corrective action was not prompt[.]" *Id.* at 7.

VESEQU recognizes that GAO consistently finds corrective action to be prompt where it is taken before the due date for the agency report. *Id.* at 12. However, VESEQU challenges this standard and argues that it represents a "rule of practice, calibrated to the ordinary single-round protest, and yields where the record shows aggravating factors that distinguish the case from the ordinary run." *Id.*

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[5] For the record, VESEQU makes the following two points here. First, it argues that because GAO declined the VA's request for dismissal, corrective action was not prompt. Req. for Costs at 7. Second, it argues that because GAO concluded that the request for dismissal went "to the merits of the question presented" the protest was clearly meritorious. *Id.*; Comments at 5. We have previously established that pursuit of a reasonable (*i.e.*, non-frivolous) procedural litigation strategy before corrective action does not constitute undue delay in taking corrective action. *See e.g.*, *Abhe & Svoboda, Inc.--Costs*, *supra* at 2. Furthermore, our statement that the request for dismissal goes to the merits of the question presented addressed the agency's request and had nothing to do with whether the protest had any merit. *See e.g.*, *id.* (discussing GAO's decision to decline a request for dismissal where the request addressed the merits of the protest, and finding that corrective action was prompt because it was filed prior to the due date for the agency report).

The VA asks our Office to deny VESEQU's request because the protest was not clearly meritorious, nor was the agency's corrective action unduly delayed. Resp. to Req. for Costs at 3, 6-7. Salient here, the agency argues that its notice of corrective action filed 5 days before the due date for the agency report represents prompt corrective action and therefore, the standard for GAO to issue a recommendation for reimbursement of costs is not met. *Id.* at 6.

Here, the VA took prompt corrective action in response to VESEQU's protest. The agency report was due on July 27, and the VA filed its notice of corrective action on July 22, 5 days before the report was due. This is prompt corrective action. Contrary to the requester's arguments, it is of no consequence that this matter involved a prior agency-level protest or that the VA filed an unsuccessful request for dismissal. *See AeroSage, LLC--Costs*, *supra* at 3-4; *Abhe & Svoboda, Inc.--Costs*, *supra* at 3-4. Nor is it of any consequence that VESEQU filed the referenced four documents into the protest record (none of which were comments on an agency report).[6] *See C.I. Lovell, Inc.--Costs*, *supra* at 3. Because the VA filed its notice of corrective action before the due date for the agency report, we consider the corrective action prompt. Because the agency took prompt corrective action, the standard for issuing a recommendation for reimbursement of costs is not met. *AeroSage, LLC--Costs*, *supra* at 3-4. We need not address the merits of the underlying protest. *Id.* at 4 n.4.

The request is denied.

Edda Emmanuelli Perez
General Counsel

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[6] Our decisions consistently explain that reimbursement is not appropriate where a protester was not required to expend unnecessary costs preparing comments on an agency report. *C.I. Lovell, Inc.--Costs*, *supra* at 3; *Knowlogy Corp.--Costs*, B-416208.2, Aug. 13, 2018, at 3. While VESEQU contends that this is not an appropriate standard here, we disagree. *See* Comments at 7. The instant matter is not unique and provides no reason to depart from our well-trodden standard. Also, for the record, VESEQU's complaint about filing four rounds of briefing is misleading. VESEQU's first cited document is the initial protest (a seminal document in every matter), the second is a premature response to the request for dismissal (filed before the agency's deadline for a contracting officer's declaration), the third is VESEQU's substantive response to the request for dismissal, and the fourth is a supplemental protest. *See* Req. for Costs at 7; Comments at 7.