



Decision

Matter of: Computer Cite--Costs

File: B-402792.5; B-403769.2

Date: April 14, 2011

Cammy C. Ticknor for the protester.
Maj. John C. Dohn, Department of the Army, for the agency.
Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request that the Government Accountability Office recommend that the protester be reimbursed its costs of filing and pursuing protests because the agency allegedly delayed implementation of promised corrective action is denied, where the agency took reasonably prompt steps to implement its promised corrective action.

DECISION

Computer Cite (CCite), of San Ramon, California, requests that our Office recommend that the Department of the Army reimburse the firm the reasonable costs of filing and pursuing its protests with respect to section 8(a) awards made to Saalex Corp. for various support services.

We deny the request for entitlement to costs.

BACKGROUND

In early 2010, the Army decided to consolidate its requirements for certain administrative and support services that had previously been procured under four separate section 8(a) contracts. The Army issued request for quotations (RFQ) No. W9124N-10-T-0021, as a small business set-aside, for the award of single contract. See Contracting Officer's (CO) Statement, B-402792.5, at 1. In response to the protest of another vendor, the Army concluded that the solicitation did not meet its needs, cancelled the solicitation, and determined that it would issue a new solicitation. See Bara Infoware, Inc., B-402792.3, June 11, 2010.

The Army then issued RFQ No. W9124N-10-T-0095, as a small business set-aside. Five vendors, including CCite, submitted quotations, all of which were found to be unacceptable. CO's Statement, B-402792.5, at 1. The Army cancelled the solicitation and offered the procurement to the Small Business Administration (SBA) for a direct award under that agency's section 8(a) program to Saalex Corp. SBA accepted the procurement and made a direct award to Saalex. On August 31, 2010, CCite protested to our Office, arguing that the award to Saalex violated SBA's regulations.¹ Performance of Saalex's contract was stayed by the protest. On September 30, before submitting its report in response to CCite's protest, the Army informed our Office that it would withdraw this requirement from the section 8(a) program and resolicit the requirement as a small business set-aside. We dismissed CCite's protest as academic. See Computer Cite, B-402792.4, Oct. 6, 2010.

Before taking corrective action in response to CCite's protest (B-402792.4), the Army determined that the services were necessary for mission-critical support, and, to maintain emergency services while CCite's protest was pending, the Army decided to award a 4-month bridge contract to Saalex (first bridge contract). On September 1, the SBA accepted the Army's offer for award of a 4-month bridge contract to Saalex, as a section 8(a) directed award. See Agency Report (AR), B-403769, Tab 3, SBA's Acceptance Letter, at 2. On September 2, CCite protested (B-403769) the award of this bridge contract as violating SBA's regulations. The performance of the first bridge contract was stayed by the protest. The Army determined that a "significant portion" of the contract's scope was not required and terminated the contract. We dismissed CCite's protest as academic. See Computer Cite, B-403769, Oct. 18, 2010.

On September 10, the Army awarded a second bridge contract to Saalex to obtain limited emergency dispatch services for 30 days; Saalex was the incumbent contractor for these services. This contract was not protested.

DISCUSSION

CCite requests that we find that the protester should be reimbursed its costs of filing and pursuing its protests, because the Army has unreasonably delayed implementing the promised corrective actions that caused our Office to dismiss its protests as academic. We disagree.

We have recognized that the reimbursement of protest costs may be appropriate where an agency does not timely implement the promised corrective action that led

¹ Specifically, CCite asserted that accepting this procurement into the section 8(a) program violated 13 C.F.R. § 124.504(a).

to the dismissal of an earlier protest.² See AdaRose Inc.–Protest and Costs, B-299091.2, Jan. 14, 2008, 2008 CPD ¶ 18 at 4; Louisiana Clearwater, Inc.–Recon. and Costs, B-283081.4, B-283081.5, Apr. 14, 2000, 2000 CPD ¶ 209 at 6; Commercial Energies, Inc.–Recon. and Declaration of Entitlement to Costs, B-243718.2, Dec. 3, 1991, 91-2 CPD ¶ 499 at 6. Our Office has also found that months-long delays do not by themselves constitute an undue delay where an agency reasonably justifies or explains those delays. See, e.g., J&J/BMAR Joint Venture, LLP–Costs, B-290316.7, July 22, 2003, 2003 CPD ¶ 129 at 3 (9-month delay in the implementation of corrective action was not an undue delay).

Here, the Army states that following the dismissal of CCite’s protests, in early November 2010, the agency transferred the procurement to a new contracting office “to provide a fresh perspective on a problematic procurement.” CO’s Statement, B-402792.5, B-403769.2, at 3. The agency’s contract specialist in the new contracting office began reviewing the requirements and, on December 17, 2010, drafted a request for proposals (RFP) for these requirements. AR, B-403769.2, Memorandum of Law, at 5. Revisions were made to the draft RFP in January 2011. On February 16, the Army posted a synopsis of its requirements on the FedBizOpps website, and on February 19, the RFP was posted on the website as a small business set-aside. The RFP has since been amended three times.³ The closing date for receipt of proposals was March 3.

The record shows that the Army did not unduly delay implementing its promised corrective action. Instead, from the time the Army proposed corrective action in October, 2010, until the issuance of the RFP as a small business set-aside four months later (in February, 2011), the Army acted as it promised in its corrective

² Our regulations also provide that we may recommend reimbursement of protest costs where an agency unduly delays taking corrective action in response to a clearly meritorious protest. See 4 C.F.R. § 21.8(e) (2010). The protester’s request for protest costs based upon the agency’s undue delay in taking corrective action in the face of a clearly meritorious protest is required to be filed within 15 days of our decision dismissing the protest based upon the agency’s corrective action. *Id.* To the extent that CCite is also requesting reimbursement of its protest costs based upon section 21.8(e) of our regulations—that is, asserting that the Army unduly delayed proposing corrective action in response to its protests—the protester’s request is untimely and is dismissed.

³ CCite has not protested the terms of the RFP.

action letter. Accordingly, we find no basis to recommend that CCite should be reimbursed its costs for filing and pursuing its protests.

The request is denied.

Lynn H. Gibson
General Counsel