



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** The Ross Group Construction Corporation--Request for Modification of Remedy

**File:** B-405180.3

**Date:** August 7, 2012

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Henry E. Steck, Esq., Harrison Steck, P.C., for the protester.  
Tracey Jefferies, Esq., Department of the Army, for the agency.  
Andrew J. Stephens, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Request that an agency reimburse protester for proposal preparation costs is denied where the agency acted within its discretion to require re-certification of small business size status when requesting task order proposals under a small business multiple award task order contract.

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### DECISION

The Ross Group Construction Corporation, of Tulsa, Oklahoma, requests that our Office modify our earlier remedy and recommend that the Department of the Army, U.S. Army Corps of Engineers reimburse The Ross Group for proposal preparation costs as a result of our decision in Ross Group Constr. Corp., B-405180.2, Nov. 28, 2011, 2011 CPD ¶ 270. In that decision, we sustained The Ross Group's protest against the Corp's award of a task order to Blackhawk Ventures, LLC, under request for proposals (RFP) W912G-11-R-0004, for the construction of a battle command training center at Fort Sam Houston, Texas.<sup>1</sup>

We deny the request.

On November 28, 2011, we sustained the protest of The Ross Group on the grounds that the agency had no reasonable basis for its selection of the awardee's

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<sup>1</sup> The solicitation was issued to holders of a small business multiple award task order contract (MATOC), including The Ross Group and Blackhawk.

higher-priced proposal where the decision was based on the awardee's evaluated superiority for past performance, even though the awardee's proposal failed to comply with the solicitation's stated requirements under the past performance factor. We recommended that agency consider its needs and, if appropriate, amend the solicitation and re-open the competition. We also recommended that the protester be reimbursed the reasonable costs of filing and pursuing its protest.

In response to our recommendation, on December 20, 2011, the Corps amended the solicitation revising the technical proposal requirements in areas related to past performance. The Ross Group acknowledges that this action comports with our recommendation to amend the solicitation. On December 23, 2011, the agency further amended the solicitation to require offerors to re-certify their small business size status.

The Ross Group requests that we now recommend the agency reimburse it for proposal preparation costs. The Ross Group argues that by requesting re-certification of offerors' small business size status, the agency failed to fully implement our recommendation that the procurement be re-opened to permit all offerors to compete. However, The Ross Group admits that, although it was a small business concern at the time of the award of the MATOC contract, it cannot now re-certify this status, and acknowledges that an agency has the discretion to request re-certification of small business size status for individual task orders issued under an ID/IQ contract. See Enterprise Info. Sys., Inc., B-403028, Sept. 10, 2010, 2010 CPD ¶ 213 at 3.

Where our Office sustains a protest, we may recommend that the protester be reimbursed its proposal preparation costs. 4 C.F.R. § 21.8(d)(2) (2012). We have declined to recommend reimbursement of proposal preparation costs in instances when agencies implement our recommendations, but also took other reasonable actions which resulted in the protester being unable to compete in a new competition. Lockheed Martin Sys. Integration-Owego; Sikorsky Aircraft Co.--Modification of Recommendation, B-299145.7, B-299145.8, Dec. 15, 2009, 2009 CPD ¶ 259 at 2; QuanTech--Costs, Inc., B-278380.3, June 17, 1998, 98-1 CPD ¶ 165 at 3. Here, we decline to recommend reimbursement of The Ross Group's proposal preparation costs because the agency acted reasonably within its discretion in requiring re-certification of small business size status from the offerors when it requested revised task order proposals under a MATOC that was restricted to small business concerns.

The request is denied.

Lynn H. Gibson  
General Counsel