



Decision

Matter of: NxGen Process Group, LLC--Costs

File: B-406650.2

Date: May 24, 2012

DECISION

NxGen Process Group, LLC, of Perrineville, New York, requests that we recommend that the firm be reimbursed the costs of filing and pursuing its protest challenging the Army's award of a contract to another firm under request for proposals (RFP) No. W9124L-LP92039 for appraisal services.

We dismiss the request.

The RFP, issued as a combined synopsis/solicitation under commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 12.6, provided for the award of a contract to perform appraisals necessary to maintain the Army's Maturity Model Integration (CMMI) Maturity Level 3 rating, which it obtained from the Software Engineering Institute (SEI).

The agency received proposals from the protester and the awardee. The agency evaluated the protester's proposal as technically unacceptable and made award to another offeror. On, April 21, 2012, the protester challenged both the finding that its proposal was technically unacceptable and the contract award. On May 4, 2012, well in advance of the agency report due date of May 23, the agency announced its intention to take corrective action by termination the contract for convenience and cancelling the solicitation. We dismissed the protest as academic. (B-406650, May 7, 2012).

The protester requests that our Office recommend that the agency reimburse NxGen the costs of filing and pursuing its protest. Under the Competition in Contracting Act of 1984, our Office may recommend that protest costs be reimbursed only where we find that an agency's action violated a procurement statute or regulation. 31 U.S.C. § 3554(c)(1) (2010). Our Bid Protest Regulations provide that where the contracting agency decides to take corrective action in response to a protest, we may recommend that the protester be reimbursed the

costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(e) (2012). 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. Griner's-A-One Pipeline Servs., Inc.-Costs, B-255078.3, July 22, 1994, 94-2 CPD ¶ 41 at 5. When an agency takes corrective action 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. The Sandi-Sterling Consortium-Costs, B-296246.2, Sept. 20, 2005, 2005 CPD ¶ 173 at 2-3. Here, because the agency corrective action, taken in advance of the agency report due date, was not unduly delayed, there is no basis to grant the request for reimbursement of protest costs.

The request is dismissed.

Lynn H. Gibson
General Counsel