



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** A1C Partners, LLC--Costs

**File:** B-409189.3

**Date:** September 30, 2014

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Jonathan T. Williams, Esq., Piliero Mazza PLLC, for the protester.  
Margo Stone, Esq., Department of Homeland Security, for the agency.  
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Request for recommendation that agency reimburse costs for two protests, the second of which reasserted allegations from the prior protest, is denied where the agency did not unduly delay taking corrective action in either protest, or implement corrective action which failed to address clearly meritorious issues.

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### DECISION

A1C Partners, LLC, requests that our Office recommend that it be reimbursed the reasonable costs of filing and pursuing protests challenging the award of a contract to Six3 Intelligence Solutions, Inc., issued by the Department of Homeland Security under solicitation No. HSSA02-13-R-3002, for intelligence support services.

We deny the request.

A1C filed its initial protest against the agency's award to Six3 on October 29, 2013, alleging that the agency improperly converted the solicitation's award criteria from best value to lowest-priced technically acceptable (LPTA), and did not properly evaluate Six3's price for realism, among other issues. In response to that protest, prior to the deadline for submitting the agency report, the agency decided to take corrective action consisting of reevaluating the proposals and making a new source selection decision. Based on that corrective action, our Office dismissed A1C's initial protest as academic on November 20, 2013.

The agency completed its stated corrective action on April 8, 2014, and informed A1C that it had again selected Six3 for the award of the contract. A1C requested a debriefing, which the agency provided on April 16. A1C then filed its second protest

on April 21, alleging that the agency failed to correct errors identified in A1C's initial protest, including the conversion of award criteria from best value to LPTA and the unreasonable evaluation of Six3's price. A1C additionally alleged that Six3's staffing was unacceptable, and that the agency erred in its evaluation of past performance and management capability.

On May 20, one day prior to the deadline for submitting the agency report in the second protest, the agency filed a request for the dismissal of the protest stating that the agency would review whether or not its requirements had changed, and thereafter reevaluate the proposals and make a new award decision, or cancel the solicitation. The agency also explained that if it elected to reevaluate the proposals, it might also amend the solicitation, or engage in discussions with the offerors. In response, A1C objected to the agency's request, arguing that the proposed corrective action was not rationally related to the issues raised in the protest, and that our Office should address the merits of its claims.

On May 28, our Office dismissed the second protest, concluding that although the agency's intended actions did not necessarily constitute corrective action concerning A1C's claims, the protest would be rendered academic by either agency action set forth in the request for dismissal. That is, in the event that the agency determined to reevaluate the proposals and make a new award decision, that action would render A1C's protest against the prior evaluation and award decision academic. Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132. Similarly, if the agency instead determined to cancel the solicitation, that action would also render a protest of the prior evaluation under the solicitation academic. Id. Our Office does not consider academic protests because to do so would serve no useful public policy purpose.

On June 12, A1C filed this request for reimbursement of its reasonable costs of filing and pursuing the protests. A1C asserts that it is entitled to reimbursement because the agency failed to implement the promised corrective action that prompted the dismissal of A1C's initial October 29 protest, requiring it to file its second protest challenging the very same procurement deficiency. In this regard, A1C asserts that its October 29 protest identified errors in the agency's price realism evaluation and best value decision. A1C argues that the agency's corrective action in response to the October 29 protest promised to remedy those defects, but that the defects remained in the agency's April 8 award decision, thereby requiring A1C to file its April 21 protest to challenge the very same procurement deficiencies.

Where a procuring agency takes corrective action in response to a protest, we may recommend that it reimburse the protester its protest costs if, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the

protest process in order to obtain relief. Taylor Consultants, Inc.--Costs, B-400324.3, Feb. 2, 2009, 2009 CPD ¶ 37 at 3. Generally, when an agency takes corrective action before the due date for its report, our Office regards such action as prompt and will not recommend reimbursement of costs. The Sandi-Sterling Consortium--Costs, B-296246.2, Sept. 20, 2005, 2005 CPD ¶ 173 at 2-3. We have recognized, however, that the mere promise of corrective action, without reasonably prompt implementation, has the obvious effect of circumventing the goal of the bid protest system for the economic and expeditious resolution of bid protests. See Louisiana Clearwater, Inc.--Recon. and Costs, B-283081.4, B-283081.5, Apr. 14, 2000, 2000 CPD ¶ 209 at 6. Thus, where an agency fails to implement the promised corrective action, or implements corrective action that fails to address a clearly meritorious issue raised in an initial protest, such that the protester is put to the expense of subsequently protesting the very same procurement deficiency, the agency's action has precluded the timely, economical resolution of the protest. Id.

Here, there is no basis to conclude that the agency has unduly delayed taking corrective action in the face of a clearly meritorious protest. In response to A1C's October 29 protest, the agency took corrective action prior to the deadline for submission of the agency report. Accordingly, the agency did not unduly delay corrective action in that case. Further, with respect to the corrective action taken pursuant to the October 29 protest, we cannot conclude that the agency failed to implement the promised corrective action, or implemented corrective action that failed to address a clearly meritorious issue.

First, the protester acknowledges that the agency did undertake a reevaluation of the proposals during the corrective action period, which resulted in several changes to the proposal ratings. Specifically, as a result of the reevaluation, A1C's rating under the management capability evaluation factor was reduced from "good" to "acceptable," while Six3's rating under the technical understanding factor was increased from "acceptable" to "good." April 21, 2014 Protest at 6. Thus, the record demonstrates that the agency did implement the promised corrective action by conducting a reevaluation of the proposals and making a new source selection decision.

Second, we disagree that the implemented corrective action failed to address a clearly meritorious issue. In this regard, we conclude that the issues which A1C alleges were not addressed in the agency's corrective action--specifically the price realism analysis of Six3's proposal, and the best value decision--were not clearly meritorious as presented in the October 29 protest. Rather, reaching a decision on the reasonableness of Six3's price realism evaluation, or on the agency's alleged departure from the solicitation's best value award criteria, would have required further development of the record through the agency report and protester's comments as well as substantial additional analysis of the record and the parties' legal arguments. Because the resolution of these issues required further development, in our view, they presented a close question and therefore were not

clearly meritorious. Systems Research and Applications Corporation--Costs, B-406775.3, Apr. 10, 2013, 2013 CPD ¶ 99 at 5; Yardney Technical Products, Inc.--Costs, B-297648.3, Mar. 28, 2006, 2006 CPD ¶ 65 at 4.

Finally, A1C argues that it is entitled to reimbursement of the costs of filing its second protest where, despite the agency's decision to take corrective action prior to the deadline for the agency report, the agency caused the protester to expend unnecessary time and resources by filing a list of documents to be produced in its agency report, as required by our Bid Protests Regulations. See Bid Protest Regulations, 4 C.F.R. § 21.3(c). A1C contends that the agency's decision to file its document list constituted a defense of the protest, which required the protester to respond with a seven page objection to the scope of the agency's proposed document production.

We disagree that the agency's submission of its document list constituted a defense of the protest, causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. In accordance with our general rule on prompt agency action, because the agency took corrective action in the second protest prior to the deadline for submitting its report, we conclude that there is no question that the agency's corrective action was prompt. The Sandi-Sterling Consortium--Costs, supra.

The request is denied.

Susan A. Poling  
General Counsel