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Decision

Matter of: Apex Transit Solutions, LLC--Costs

File: B-418631.4

Date: February 8, 2021

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Kimberly Kegowicz, Esq., Department of Veterans Affairs, for the agency.

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DIGEST

Request for a recommendation for reimbursement of protest costs is denied where none of the protest grounds raised in several protests was clearly meritorious and where the agency did not unduly delay taking corrective actions in response to those protests.

DECISION

Apex Transit Solutions, LLC, a small business of Cleveland, Ohio, requests that our Office recommend that it be reimbursed the costs associated with filing and pursuing its four protests challenging the award of a contract to GC Logistics, LLC, a service-disabled veteran-owned small business, under requests for quotations (RFQ) Nos. 36C25019Q0494 and 36C25020Q0093, issued by the Department of Veterans Affairs (VA) for ambulette transportation services. Apex argues that its protests were clearly meritorious and that the agency unduly delayed taking corrective action.

We deny the request.

BACKGROUND

On June 13, 2019, the agency issued RFQ No. 36C25019Q0494, as a small business set-aside, seeking proposals for ambulette transportation services for the VA Cleveland Healthcare System located in Cleveland, Ohio. Protest (B-418114) at 2. The VA conducted the procurement using the simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 13.5, and anticipated award for a base year and

one 6-month option period. *Id.* The RFQ advised that the agency would evaluate quotations considering technical acceptability, past performance, and price.¹ *Id.*

On September 25, after evaluating quotations, the agency made award to GC Logistics. *Id.* On October 7, 2019, Apex filed its initial bid protest with our Office (B-418114), alleging that: (1) the VA failed to conduct a meaningful analysis of the labor rates and price reasonableness with respect to the awardee's quotation; and (2) GC Logistics's quotation was not responsive to the solicitation. Protest (B-418114) at 1, 3-5. On October 23, before filing its agency report, the VA notified our Office that it had determined that the acquisition might "not have adhered to federal procurement policy law and regulation," and that it decided to take corrective action. Oct. 23, 2019, Notice of Corrective Action at 1. Specifically, the VA stated that it would rescind the award, reassess the agency's requirements, and resolicit the requirement. *Id.* On October 30, our Office dismissed Apex's first protest as academic. *Apex Transit Solutions, LLC*, Oct. 30, 2019, B-418114 (unpublished decision).

On February 14, 2020, as part of corrective action taken in response to that first protest, the agency issued RFQ No. 36C25020Q0093 for the same requirement. Agency Response to Req. for Costs at 2. After evaluating quotations, the agency once again awarded the contract to GC Logistics. *Id.* On April 3, Apex filed another protest with our Office (B-418631), raising the same two grounds as in its first protest described above, related to the evaluation of price quotations and the awardee's responsiveness, and challenging the agency's evaluation of Apex's past performance.² Protest (B-418631) at 3-6.

On April 10, the VA again elected to take corrective action by reevaluating quotations and making a new award in accordance with the reevaluation results. Apr. 10, 2020, Notice of Corrective Action at 2. As a result, on April 15, we dismissed Apex's second protest as academic. *Apex Transit Solutions, LLC*, Apr. 15, 2020, B-418631 (unpublished decision).

On May 1, over two weeks after the dismissal of that protest, the VA submitted to our Office a notice of amended corrective action, which provided that:

¹ As we will discuss below, as part of its first corrective action, the agency reissued the solicitation as RFQ No. 36C25020Q0093, and modified its evaluation factors. Protest (B-418631.3), Agency Report, Exh. 3, RFQ. Under that RFQ, award was to be made to a responsible vendor whose quotation conformed to the solicitation requirements, considering past performance, socioeconomic factors and price. *Id.* at 70. As relevant here, the agency was to "evaluate price reasonableness." *Id.* at 71.

² Specifically, Apex reiterated its previous allegations that the VA failed to conduct a meaningful analysis of GC Logistics's proposed labor rates and price reasonableness, and that the awardee's quotation was not responsive to the solicitation. Protest (B-418631) at 4-6.

VA has determined, in the interest of fairness and to protect the integrity of the procurement process, that an amendment should be issued to current offerors eliminating the page limit and accepting new past performance proposals.

May 1, 2020, Notice of Amended Corrective Action at 1.

On May 11, Apex protested the scope of the VA's amended proposed corrective action. Protest (B-418631.2) at 1, 3. Apex alleged that the amended proposed corrective action addressed only one aspect of Apex's second protest, *i.e.*, past performance, but was "silent as to any additional actions the VA will take to correct the other two [evaluation] errors" identified by Apex. *Id.*

On May 20, the agency clarified its amended proposed corrective action notice, explaining that the notice did not replace the initial proposed corrective action but rather, it was intended to supplement the initial notice with respect to past performance. Clarification Notice of Agency's Amended Corrective Action at 1. Based on this clarification, on May 22, Apex withdrew its protest.

After reevaluating quotations as a result of the agency's corrective actions taken in response to protests B-418631 and B-418631.2, the VA once again made an award to GC Logistics. Protest (B-418631.3), Exh. A, Award Notice at 1. On July 6, Apex filed its fourth protest with our Office (B-418631.3), in which it challenged: (1) the agency's evaluation of its past performance; (2) the VA's evaluation of offerors' proposed labor rates, price reasonableness, and price realism; (3) the responsiveness of GC Logistics's quotation; (4) the agency's best-value determination; and (5) the adequacy of the VA's post-award debriefing. Protest (B-418631.3) at 1, 4-10.

On August 5, the agency submitted its agency report, in which it defended all of the protest grounds raised in protest B-418631.3. Response to Req. for Costs at 4. On August 17, Apex filed its comments on the agency report, in which it also challenged the agency's evaluation of the awardee's past performance. Comments on Agency Response at 9. In order to be able to fully assess the merits of this aspect of Apex's protest, on August 28, our Office requested a response from the agency addressing this challenge involving the awardee's proposal. Electronic Protest Docketing System (EPDS), Dkt. No. 28 (establishing September 4, 2020, as the agency's deadline for submission of additional briefing).

On September 4, the VA notified our Office that it would take corrective action by reevaluating the past performance of all offerors, and making a new award decision based on the results of the reevaluation. Sept. 4, 2020, Notice of Corrective Action at 2.

On September 15, our Office dismissed the protest as academic.³ *Apex Transit Solutions, LLC*, Sept. 15, 2020, B-418631.3 (unpublished decision).

Subsequently, Apex timely filed this request, pursuant to 4 C.F.R. § 21.8(e), that we recommend that the VA reimburse Apex its reasonable costs of filing and pursuing the protests.

DISCUSSION

Apex asks our Office to recommend that the VA reimburse its protest costs with respect to all issues pursued in its four protests (*i.e.*, B-418114, B-418631, B-418631.2, and B-418631.3). Req. for Costs at 1, 4-5.

Under the Competition in Contracting Act of 1984 (CICA), our Office is authorized to recommend reimbursement of protest costs only where we find that an agency's actions violated a procurement statute or regulation. 31 U.S.C. § 3554(c)(1). Our Bid Protest Regulations provide that where an agency takes corrective action in response to a protest, our Office may recommend that the agency pay the protester its reasonable costs of filing and pursuing the protest. 4 C.F.R. § 21.8(e). This imposition of costs is not intended as an award to prevailing protesters or as a penalty to the agency, but rather, is designed to encourage agencies to take prompt action to correct apparent defects in competitive procurements. *Science Applications Int'l Corp.--Costs*, B-410760.5, Nov. 24, 2015, 2015 CPD ¶ 370 at 4. However, our regulations do not contemplate a recommendation for the reimbursement of protest costs in every case where an agency takes corrective action, but rather, only where an agency unduly delays taking corrective action in the face of a clearly meritorious protest. *Information Ventures, Inc.--Costs*, B-294580.2 *et al.*, Dec. 6, 2004, 2004 CPD ¶ 244 at 2.

Thus, as a prerequisite to our recommending the reimbursement of costs where a protest has been resolved by corrective action, not only must the protest have been meritorious, but it also must have been clearly meritorious, *i.e.*, not a close question. *Overlook Sys. Techs., Inc.--Costs*, B-298099.3, Oct. 5, 2006, 2006 CPD ¶ 184 at 6. Additionally, while we consider corrective action to be prompt if it is taken before the due date for the agency report responding to the protest, we generally do not consider it to be prompt where it is taken after that date. *AGFA HealthCare Corp.--Costs*, B-400733.6, Apr. 22, 2009, 2009 CPD ¶ 90 at 3-4.

³ The VA stated that its proposed corrective action related to the agency's evaluation of vendors' past performance as well as the agency's best-value decision would render these protest grounds academic, and asked us to dismiss only those two protest grounds as academic. Sept. 4, 2020, Notice of Corrective Action at 2. The VA requested a decision on the remaining protest grounds, arguing that these issues would not be affected by the proposed corrective action. *Id.* at 2-3. We dismissed the protest, however, because the agency's proposed corrective action could have resulted in a new award decision, and therefore rendered the entire protest academic.

Apex contends that reimbursement is warranted here because it was forced to file four protests with our Office challenging the agency's evaluation of its quotation, "expending time, effort, and money," and yet, "the VA has failed to rectify the situation" to date. Req. for Costs at 1. The protester asserts that the agency unduly delayed taking corrective action in the face of clearly meritorious protest grounds.

In response, the agency first contends that its corrective actions in response to Apex's earlier protests were undertaken in good faith and were not unduly delayed. Agency Response to Req. for Costs at 4-7. The agency further argues that the protest grounds raised in Apex's latest protest, B-418631.3, were not clearly meritorious. *Id.* at 7-11.

Based upon our review of the record, we find that the protester has not met its burden to establish that the agency unduly delayed taking corrective action in response to any clearly meritorious protest grounds. We first address Apex's most recent protest, B-418631.3, in which the agency provided an agency report substantively responding to Apex's challenges. As explained below, we conclude that none of the grounds raised in this protest were clearly meritorious. Thereafter, we address each of Apex's prior protests, concluding that none provides a basis upon which we could recommend reimbursements of protest costs.

Protest B-418631.3

In its most recent protest, Apex challenged numerous aspects of the agency's evaluation and award decision. Arguing in support of reimbursement, Apex claims that the agency's corrective action, announced after the due date for the agency report and receipt of the protester's comments, was unduly delayed in response to its clearly meritorious protest grounds. Comments on Agency Response at 4-7. Based upon the record before us, even if we agreed that the agency's corrective action was not prompt, we conclude that none of the grounds raised in this protest were clearly meritorious.

A protest is clearly meritorious where a reasonable agency inquiry into the protester's allegations would reveal facts showing the absence of a defensible legal position. *Abacus Tech. Corp.--Costs*, B-416390.6, Sept. 27, 2019, 2019 CPD ¶ 349 at 7. The existence of any defensible legal position or close question is sufficient to show that a protest allegation was not clearly meritorious so as to warrant reimbursement of protest costs. *Triple Canopy, Inc.--Costs*, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3.

Price Evaluation

First, Apex argued that the agency failed to conduct a meaningful analysis of the reasonableness and realism of the awardee's proposed labor rates. Protest (B-418631.3) at 5-8. In support, Apex contended that due to the price difference between its quotation and that of the awardee, GC Logistics, GC Logistics based its pricing on incorrect wage classifications for its ambulette drivers and a possible failure to include health and welfare benefits for its employees. *Id.* at 6-7. According to Apex,

the agency should have found GC Logistics's low proposed price to be unreasonable and unrealistic.

Before awarding a fixed-price contract, an agency is required to determine that the price offered is fair and reasonable. FAR 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted. See *McDonnell Douglas Corp.*, B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 9.

Although not required, an agency may also provide for a price realism analysis in a solicitation for the award of a fixed-price contract for the purpose of assessing whether a vendor's low price reflects a lack of understanding of the contract requirements, or risk inherent in a vendor's approach. See *Milani Constr., LLC*, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 4. However, where there is no relevant evaluation criterion pertaining to realism or understanding, a determination that a vendor's price on a fixed-price contract is too low generally concerns the vendor's responsibility, *i.e.*, the vendor's ability and capacity to successfully perform the contract at its offered price. See *id.*; see also *J.A. Farrington Janitorial Servs.*, B-296875, Oct. 18, 2005, 2005 CPD ¶ 187 at 4; *CSE Constr.*, B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 4-5. Agencies therefore may not conduct a price realism analysis without first advising vendors that the agency intends to do so. See *Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

As stated above, with respect to the evaluation of price, the RFQ stated that the agency would "evaluate price reasonableness"; that is, whether prices were too high. RFQ at 71. In support of its challenge to the agency's price evaluation, the protester does not identify any provision of the RFQ--nor is any such provision apparent to our Office--that advised vendors that their quotations would be evaluated for price realism. Thus, the record reflects that the RFQ did not contemplate the performance of a price realism analysis. Since the protester's contention that the agency should have excluded GC Logistics from the competition for proposing a low price is premised on a flawed reading of the solicitation, Apex's allegation fails to establish a violation of procurement law or regulation. Consequently, we find that Apex's challenge to the agency's price evaluation protest does not meet the clearly meritorious standard.

Responsiveness

Second, the protester argued that GC Logistics submitted a nonresponsive quotation, asserting the awardee did not have sufficient resources to perform the work required by the solicitation.⁴ Protest at 8-9. Apex also alleged that GC Logistics only recently acquired its Ohio medical transportation license and did not have it at the time it submitted its first quotation in response to the solicitation in 2019. *Id.* at 9. The

⁴ Although the protester characterizes this protest ground as relating to responsiveness, instead of responsibility, we need not resolve this issue for our ultimate determination that this protest ground was not clearly meritorious.

protester asserted that the medical transportation license was required by the RFQ, although it failed to cite to any specific solicitation provision in this regard. The protester further speculated that there could be other requirements the awardee was unable to satisfy. *Id.*

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984. See 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to review whether a procurement action constitutes a violation of a procurement statute or regulation. 31 U.S.C. § 3552. To achieve this end, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. See, e.g., *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

With respect to the responsiveness of GC Logistics's quotation, Apex has failed to allege a cognizable basis of protest, let alone allege a clearly meritorious basis of protest. Apex has not provided any direct factual support for its claims: the only piece of evidence the protester submitted with its protest was an alleged excerpt from the Ohio EMS [emergency medical services] licensed provider directory, listing "[v]ehicles [c]ount" for each provider, including the awardee; that document bears a "Date Run: 4/10/2020," *i.e.*, approximately two months before GC Logistics submitted its quotation in June 2020. Protest, Exh. H, Ohio EMS Licensed Provider Directory at 1.

Although the protester claimed that the directory was current "as of July 1, 2020," based on the April 2020 date clearly visible on that document, we decline to view the excerpt as a sufficient evidence in support of its claim that GC Logistics had only one vehicle when it submitted its quotation in June 2020, as listed in the directory. *Id.*; see *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 5 ("The protester's assertion of improper agency action alone, without any supporting explanation or documentation, does not satisfy [our bid protest requirement that protesters state legally sufficient grounds of protest]."); see also *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3-4 (protest allegation was speculative because it was not supported by any evidence); see also *Mark Dunning Indus., Inc.*, B-413321.2, B-413321.3, Mar. 2, 2017, 2017 CPD ¶ 84 at 2 (a protest allegation that is speculative fails to state a valid basis of protest). As such, we conclude that the protester's allegations regarding the awardee's responsiveness were legally insufficient and therefore not clearly meritorious.

Past Performance

Third, Apex challenged the agency's past performance evaluation. Primarily, the protester contended that the agency unreasonably evaluated its past performance. Protest (B-418631.3) at 4-5. In this regard, Apex alleged that the agency improperly failed to consider its recent performance on other similar contracts. *Id.* As support, the

protester identified a positive rating that it received on a recent contractor performance assessment report (CPAR). *Id.* According to Apex, it should have received a past performance rating of “very good” instead of “satisfactory.” *Id.*

The evaluation of past performance, including the agency’s determination of the relevance and scope of a vendor’s performance history, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation’s evaluation criteria. *LOUI Consulting Grp., Inc.*, B-413703.9, Aug. 28, 2017, 2017 CPD ¶ 277 at 3-4. Evaluating the relative merits of vendors’ past performance information is generally within the broad discretion of the contracting agency. *Id.* We review the record to ensure that the evaluation was reasonable and conducted in accordance with the solicitation’s terms. *CSR, Inc.*, B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 5.

In response to the protester’s allegations, the agency explained that in addition to the positive rating in the single CPAR referenced by Apex, “there were also documented negative comments noted, and three contracting officer representatives . . . issued deficiency reports for past [a]gency contracts for similar services.” Memorandum of Law at 6-7. The VA argued that the protester’s disagreement with the agency’s evaluation did not show that the evaluation was unreasonable. *Id.*

Here, the agency clearly had a defensible legal position regarding its evaluation of the protester’s past performance. As our Office has consistently stated, a protester’s simple disagreement regarding the agency’s judgment, without more, does not provide our Office with a sufficient basis to question the agency’s evaluation. See *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7. Thus, it appears that the agency and the protester merely disagree as to the weight that should be given to the CPAR referenced by Apex. As a result, we conclude that Apex’s disagreement with the agency’s evaluation does not meet the high bar to be considered a clearly meritorious protest ground. See *Triple Canopy, Inc.--Costs*, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3.

In its comments on the agency report, Apex also raised an allegation that GC Logistics lacked recent and relevant past performance. That is, while Apex’s initial protest filing focused on the agency’s evaluation of its own past performance, Apex’s comments asserted a new basis of protest related to the agency’s evaluation of GC Logistics’s past performance. Compare Protest (B-418631.3) with Comments at 9.

As discussed above, in response to the new argument raised in its comments regarding the agency’s evaluation of the awardee’s past performance, we requested that the agency provide additional briefing on this issue. EPDS, Dkt. No. 28 at 1. Instead of filing a response, the agency notified our Office of its intent to take corrective action by reevaluating vendors’ past performance. September 4, 2020, Notice of Corrective Action at 2.

While the protester's challenge to the agency's evaluation of the awardee's past performance raised concerns, we cannot conclude, on the record before us, that these arguments were clearly meritorious. Specifically, our Office could not determine from the record and pleadings provided by the parties whether the agency's evaluation of GC Logistics's past performance was reasonable and consistent with the solicitation. Rather, we required further development of the record in the form of a response from the agency to assist our Office in fully assessing the merits of this aspect of Apex's protest. Upon receipt of the agency's additional briefing, we would have had to conduct further substantive analysis of the parties' positions. But as discussed above, instead of filing a response, the VA informed us that it decided to take corrective action. Thus, because the ultimate resolution of this claim required further development, in our view, this protest claim presented a close question, and therefore was not clearly meritorious. *Systems Research & Applications Corp.--Costs*, B-406775.3, Apr. 10, 2013, 2013 CPD ¶ 99 at 5; *Apptis Inc.--Costs*, B-402146.3, Mar. 31, 2010, 2010 CPD ¶ 123 at 4.

For these reasons, we conclude that none of the allegations raised by Apex in its most recent protest meet the high bar set by the clearly meritorious standard.⁵ *Northrop Grumman Sys. Corp.--Costs*, B-412278.6, Feb. 7, 2017, 2017 CPD ¶ 68 at 5.

Prior Protests

Protest B-418114

In its first protest related to this requirement, Apex challenged the reasonableness and realism of the awardee's quoted labor rates, and the responsiveness of its quotation. Protest (B-418114) at 1, 3-5.

As discussed above, however, neither the agency's evaluation of GC Logistics's price quotation nor the awardee's responsiveness presented clearly meritorious protest

⁵ As mentioned above, the protester also challenged the agency's best-value determination and the sufficiency of the post-award debriefing. Protest (B-418631.3) at 1, 9-10. First, we note that the adequacy of a debriefing or post-award notice is a procedural matter that is not for consideration of our Office; the agency's actions after award are unrelated to the validity of the award itself. See *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 5; *The Ideal Solution, LLC*, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2. Accordingly, Apex's argument here failed to state a legally or factually sufficient basis of protest, and hence, was not clearly meritorious. See 4 C.F.R. § 21.1(c)(4) and (f).

Second, the allegation regarding the agency's best-value determination is derivative of the protester's challenge to the agency's evaluation of the awardee's and its own proposals. Since we find none of these allegations clearly meritorious, we conclude that this derivative challenge to the best-value determination fails to provide a basis upon which to recommend costs. *DirectVizSolutions, LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

grounds. In addition, the agency took prompt corrective action prior to filing its agency report, intending to rescind the award, reassess the agency's requirements, and resolicit the requirement. Oct. 23, 2019, Notice of Corrective Action at 1. Therefore, we conclude that the protester has not met its burden to establish that the agency unduly delayed taking corrective action in response to clearly meritorious protest grounds, and deny Apex's request for recommendation for reimbursement of its initial protest costs.

Protest B-418631

The protester also seeks a recommendation from our Office that the agency reimburse its costs of pursuing its second protest, B-418631, in which it alleged that the agency unreasonably evaluated its past performance, failed to perform a reasonable price evaluation, and should have rejected GC Logistics's quotation as nonresponsive. Req. for Costs at 2. As stated above, the agency took corrective action in response to that protest prior to the agency report deadline. Apr. 10, 2020 Notice of Corrective Action at 2. As a result, on April 15, we dismissed Apex's second protest as academic. *Apex Transit Solutions, LLC*, Apr. 15, 2020, B-418631 (unpublished decision).

While, as a general rule, we will not find undue delay when an agency takes corrective action prior to the deadline for the agency's report, this is not the case where an agency implements corrective action that fails to address a meritorious issue raised in the protest that prompted the corrective action, such that the protester is put to the expense of subsequently protesting the very same procurement deficiency. See *Louisiana Clearwater, Inc.--Recon & Costs*, B-283081.4, B-283081.5, Apr. 14, 2000, 2000 CPD ¶ 209 at 6. Our Office has explained in several decisions, however, that the principles set forth in *Louisiana Clearwater* address a narrow range of circumstances, namely, those where an agency fails to implement corrective action in good faith in response to a clearly meritorious protest. *Bluehorse Corp.--Recon.*, B-414383.3, Aug. 28, 2017, 2017 CPD ¶ 267 at 3.

Here, the record does not demonstrate that the agency failed to implement prompt corrective action with respect to Apex's challenges to the agency's evaluation and source selection decision. See *Ace Info Sols., Inc.--Costs*, B-414650.27, May 14, 2019, 2019 CPD ¶ 179 at 6-7. Moreover, as we have discussed above, none of the protester's challenges to the agency's evaluation of past performance and price, or its allegation that GC Logistics's quotation was nonresponsive were clearly meritorious. As a result, we decline to recommend reimbursement for costs related to Apex's pursuit of this prior protest.

Protest B-418631.2

In addition, Apex seeks a recommendation for reimbursement of costs it incurred by pursuing its protest challenging the scope of the VA's amended proposed corrective action, taken in response to its protest B-418631, discussed above. Protest (B-418631.2) at 1, 3. Apex alleged that the amended proposed corrective action addressed only one aspect of its second protest, past performance, but was "silent as to

any additional actions the VA will take to correct the other two [evaluation] errors” identified by Apex. *Id.*

As already discussed, after the agency clarified its amended proposed corrective action, explaining that the amended notice was only intended to supplement the initial corrective action notice with respect to past performance, Apex accepted this explanation and withdrew its protest. Because Apex’s protest was based on an incorrect understanding of the agency’s amended proposed corrective action, we conclude that this protest was not clearly meritorious. Accordingly, we deny the protester’s request for a recommendation for the reimbursement of these protest costs.

As discussed above, the protester has not established that the agency unduly delayed taking corrective in response to any clearly meritorious protest grounds. With respect to Apex’s prior protests, the record demonstrates that the VA’s corrective actions were prompt. Related to Apex’s most recent protest, Apex failed to establish that any of its protest grounds were clearly meritorious. Consequently, while we acknowledge that Apex has filed four protests in connection with the VA’s requirement for ambulette transportation services, we nevertheless decline to recommend reimbursement for Apex’s pursuit of any of its protest grounds.

The request is denied.

Thomas H. Armstrong
General Counsel