



Decision

Matter of: PNS Holdings, LLC- Costs

File: B-418798.3

Date: October 1, 2020

Pavel Sivokonev for the protester.
Allison C. Eck, Esq., Defense Logistics Agency, for the agency.
Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation that protest costs be reimbursed is denied where the record does not establish that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest.

DECISION

PNS Holdings, LLC, a small business of Webster, New York, requests that our Office recommend it be reimbursed the costs associated with pursuing its protest under request for proposals (RFP) No. SPE1C1-20-R-0103, issued by the Department of Defense, Defense Logistics Agency (DLA), for isolation gowns. PNS argues that it prevailed in its protest because the agency took corrective action.

We deny the request.

BACKGROUND

On May 20, 2020, DLA posted the RFP on beta.Sam.gov. Resp. to Req. for Costs, exh. 2 at 1. The closing date for the RFP, as listed on beta.Sam.gov, was May 28 at 10:00 p.m. Eastern Daylight Savings Time (EDT). *Id.* The RFP, however, listed two different closing times. Page one of the RFP provided that proposals were due by May 28 at 10:00 p.m. local time¹; page four of the RFP provided that proposals were due by May 28 at 10:00 p.m. Eastern Standard Time (EST). Resp. to Req. for Costs,

¹ In this context, local time refers to EDT. Resp. to Req. for Costs at 2.

exh. 1, RFP at 1, 4. Following the posting of the RFP on beta.Sam.gov, the agency issued six amendments. Resp. to Req. for Costs at 1. As relevant here, amendment 0004 extended the due date from May 28 at 10:00 p.m. EST to June 1 at 10:00 p.m. EST.² Resp. to Req. for Costs, exh. 4, amend. 0004 at 3.

PNS submitted its proposal at 10:22 p.m. EDT on June 1. Resp. to Req. for Costs, exh. 5, Protest at 1. Upon learning its proposal submission was untimely, PNS filed a protest with our Office on June 2, contending that beta.Sam.gov provided that the closing time was 10:00 p.m. Central Daylight Savings Time (CDT). *Id.* On June 17, prior to the due date for the agency report, DLA informed our Office that it intended to take corrective action. Resp. to Req. for Costs at 2. Specifically, DLA stated that it would accept PNS's proposal as timely. *Id.* Our Office dismissed the protest as academic on June 22. On June 26, PNS filed a request for a recommendation for the reimbursement of costs with our Office. Req. for Costs at 1.

DISCUSSION

PNS argues that reimbursement of its protest costs is warranted here because the agency took corrective action, which according to PNS, indicates that PNS prevailed in its protest. For the reasons discussed below, we deny the request.

When an agency takes corrective action in response to a protest, we may recommend the agency reimburse the protester its protest costs if, under the circumstances, we determine the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.8(e); *Information Ventures, Inc.-Costs*, B-294580.2 *et al.*, Dec. 6, 2004, 2004 CPD ¶ 244 at 2-3. In other words, to prevail in its request, the protester must show (1) the agency unduly delayed taking corrective action, and (2) its protest was not only meritorious, but clearly meritorious. *Triple Canopy, Inc.-Costs*, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3.

Here, the record does not indicate that agency unduly delayed taking corrective action in the face of a clearly meritorious protest. As stated above, the agency took corrective action on June 17, which was prior to the due date for the agency report, and only 15 days after the protest was filed. Resp. to Req. for Costs at 2. Our Office generally views an agency's action as prompt, that is, the agency did not unduly delay taking corrective action, when the corrective action is taken prior to the due date and time for

² Although amendment 0004 identified the solicitation closing date as 10:00 p.m. EST, the listing on beta.Sam.gov identified the due date for offers as 10:00 p.m. EDT. Resp. to Req. for Costs, exh. 3 at 12.

submission of the agency report. *LGS Innovations LLC*, B-405932.3, Apr. 26, 2012, 2012 CPD ¶ 147 at 2. Because DLA took corrective action prior to that due date, there was no undue delay.

The request for a recommendation for the reimbursement of costs is denied.

Thomas H. Armstrong
General Counsel