

## Decision

**Matter of:** Potomac River Group, LLC.--Costs

**File:** B-419416.3

**Date:** June 21, 2021

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David R. Warner, Esq., Tyler J. Freiburger, Esq., and Heather B. Mims, Esq., Centre Law and Consulting, LLC, for the protester.

Kyle E. Gilbertson, Esq., Colonel Patricia S. Wiegman-Lenz, Department of the Air Force, for the agency.

Stephanie B. Magnell, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Request for recommendation that protester be reimbursed the costs of filing and pursuing its protest challenging the issuance of a task order is denied, where the agency did not unduly delay taking corrective action.

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### DECISION

Potomac River Group, LLC, a small business of Ashburn, Virginia, requests that our Office recommend that the firm be reimbursed the costs of filing and pursuing its protest. Potomac challenged the issuance of a task order by the Department of the Air Force to Victor Forward LLC, a small business of Virginia Beach, Virginia, under request for quotations (RFQ) No. RFQ1427334, which was issued for a bird radar detection system for advance detection of aircraft-bird strike risk at Melrose Air Force Range, New Mexico.

We deny the request.

On July 29, 2020, the Air Force issued the RFQ to vendors holding federal supply schedule contracts under schedule 84 in order to obtain a bird radar detection system for advance detection, alerting, and management of aircraft-bird strike risk, at Melrose Air Force Range, New Mexico. Protest at 3; Protest, exh. B, Statement of Work (SOW) at 1.<sup>1</sup> The RFQ provided for award to the lowest-priced, technically acceptable

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<sup>1</sup> Citations to the protest and exhibits are to those submitted in the protest docketed as B-419416.2.

proposal. Protest at 3. Potomac submitted a timely quotation. After several events, including an award to Victor Forward, a protest by Potomac, the agency's reevaluation, and a new award decision, on March 2, 2021, the agency affirmed the earlier award to Victor Forward. Protest, exh. A, Notice of Award at 1.

On March 12, Potomac protested the award to our Office, challenging the agency's evaluation of Victor Forward's proposal and the best-value decision. Protest at 3. The protester contended that the awardee's product did not and could not satisfy the RFQ's technical requirements. *See generally, id.* The agency report was due on April 12. Electronic Protest Docketing System No. 4, Acknowledgement of Protest, Mar. 15, 2021, at 1.

On April 5, prior to the deadline for the agency report, the Air Force advised our Office of its decision to take corrective action and requested that our Office dismiss the protest. Notice of Corrective Action & Req. for Dismissal at 1. The protester objected to the corrective action specified, and on April 8, our Office requested that the Air Force respond to the protester's objections.

On April 8, the agency submitted a supplemented and revised notice, clarifying that it would take the following corrective action:

The ordering activity will cancel the award and revise the specifications and evaluation criteria to ensure they accurately reflect radar coverage requirements and measurements. The current RFQ will be canceled, a revised RFQ will be issued, and the ordering activity will obtain quotes in response to the revised RFQ. The ordering activity will ensure that all quotes received pursuant to the revised RFQ are fairly evaluated and considered and that a new award is made in accordance with the stated evaluation criteria in the revised RFQ. The contracting officer will take any other corrective action deemed necessary and appropriate.

Supp. Notice of Corrective Action & Req. for Dismissal, Apr. 8, 2021, at 1.

On April 13, we dismissed the protest because the agency's corrective action rendered the protester's challenges academic. *See Potomac River Grp., LLC, B-419416.2, Apr. 13, 2021* (unpublished decision). Potomac now requests our Office's recommendation that the firm be reimbursed the costs of filing and pursuing its protest. Req. for Reimbursement at 1. Potomac asserts that its protest was clearly meritorious and that "the Agency's corrective action – when viewed in the context of the entire procurement process – was clearly unduly delayed." *Id.*

In response, the Air Force asserts that the protest was not clearly meritorious and, moreover, by taking corrective action prior to the deadline for the agency report, it promptly took corrective action. Agency Resp. at 4.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of 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. 4 C.F.R. § 21.8(e); *AAR Aircraft Servs.--Costs*, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. We generally view an agency's action as prompt, that is, the agency did not unduly delay taking corrective action, where the corrective action is taken prior to the due date and time for submission of the agency report. *LGS Innovations LLC*, B-405932.3, Apr. 26, 2012, 2012 CPD ¶ 147 at 2.

Here, the Air Force notified our Office that it was taking corrective action prior to the due date set for submission of the agency report. See Notice of Corrective Action & Req. for Dismissal, Apr. 5, 2021; Acknowledgement of Protest, Mar. 15, 2021, at 1 (setting due date of April 12 for agency report). Furthermore, there are no additional facts demonstrating that the agency's corrective action was otherwise unduly delayed.

While Potomac notes that the agency's corrective action taken was prompt in the context of this protest filed with our Office, the protester requests that we consider the timeliness of the corrective action "in the context of the entire procurement process," *i.e.*, any ongoing delays in the procurement since the agency's first award to Victor Forward in November 2019. Req. for Reimbursement at 1-3. However, the protester does not contest the agency's corrective action *per se*, and instead is only pursuing costs related to its most recent protest. See *generally* Req. for Reimbursement. On the facts before us, where the agency took corrective action prior to the agency report deadline, we conclude that the agency's decision to take corrective action was not unduly delayed. Accordingly, a recommendation that the agency reimburse the protesters costs is not warranted. *LGS Innovations LLC, supra* at 2.

The request is denied.

Thomas H. Armstrong  
General Counsel