

Decision

Matter of: MidAmerica Fab and Machine, LLC--Costs

File: B-419432.3

Date: March 15, 2021

Keith Picard for the protester.

Lynne Georges, 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

MidAmerica Fab and Machine, LLC, a small business of Neenah, Wisconsin, requests that our Office recommend it be reimbursed the costs associated with pursuing its protest of purchase order No. SPE5E721P0454, issued by the Department of Defense, Defense Logistics Agency (DLA), for manual control levers. MidAmerica argues that its protest was in the best interest of the government.

We deny the request.

BACKGROUND

DLA issued the subject purchase order on November 19, 2020. Resp. to Req. for Costs, attach. 1, Purchase Order at 1. On November 23, MidAmerica filed a protest with our Office challenging DLA's award of the purchase order, arguing it should have received the award because it offered a better price and more favorable terms than the awardee. Resp. to Req. for Costs at 1.

DLA filed a request for dismissal on December 3, stating it intended to take corrective action by, among other things, canceling the purchase order and making a new award decision. Resp. to Req. for Costs, attach. 2, Req. for Dismissal at 1. The same day, our Office informed the parties through our Office's Electronic Protest Docketing System (Dkt.) that we had received DLA's request for dismissal, and gave the protester until

close of business on Monday, December 7 to respond. Dkt. for B-419432, B-419432.2, No. 7. MidAmerica did not file a response.

On December 14, our Office asked DLA to clarify whether its request for dismissal listed the correct purchase order number. Dkt. No. 8. On December 15, eight days before the due date for the agency report, DLA provided a revised request for dismissal that listed the correct purchase order number. Dkt. No. 9. We dismissed the protest as academic on December 16. *MidAmerica Fab and Machine, LLC*, B-419432, B-419432.2, December 16, 2020 (unpublished decision). MidAmerica filed this request for costs on the same day. Req. for Costs at 1.

DISCUSSION

MidAmerica argues that reimbursement of its protest costs is warranted here because its protest was in the best interest of the government. 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 the agency unduly delayed taking corrective action. As mentioned above, the agency submitted its initial request for dismissal on December 7 and a revised request for dismissal on December 15; both of these dates were prior to the due date for the agency report. Dkt. No. 8; Dkt. No. 9. When an agency takes corrective action before the due date set for receipt of an agency report, our Office views such action as prompt and will not recommend the reimbursement of costs. *Science Applications Int'l Corp.-Costs*, B-410760.5, Nov. 24, 2015, 2015 CPD ¶ 370 at 6. Because DLA took corrective action prior to the due date, there was no undue delay.

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

Thomas H. Armstrong
General Counsel