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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Brian X. Scott--Costs

File: B-400168.3

Date: August 18, 2008

Brian X. Scott for the protester.

Peter F. Pontzer, Esq., Department of the Army, for the agency.

Cherie J. Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO participated in the preparation of the decision.

DIGEST

Protester's request that the Government Accountability Office (GAO) recommend reimbursement of protest costs because the agency took corrective action later than the initial agency report due date is denied where GAO concludes the agency did not unduly delay its corrective action given that GAO granted the agency an extension of time to file its administrative report, and the agency announced its intention to take corrective action before filing its report.

DECISION

Brian X. Scott requests that our Office recommend that the Department of the Army pay the protester the reasonable costs of filing and pursuing its protest with respect to solicitation No. W91GEU-08-T-5230. We dismissed the protest as academic on July 18, 2008 based on the Army's notice of corrective action.

We deny the request.

On April 23, 2008, the Joint Contracting Command -- Iraq/Afghanistan (JCC-IA) issued a solicitation for resource management specialist services to support detainee operations in Iraq. Agency Request for Dismissal at 2, attach. 1, at 1. The solicitation was originally set to close on May 4. Agency Request for Dismissal attach. 1, at 1. After the solicitation had closed, agency officials decided that the solicitation should have been published on the FedBizOpps (FBO) website. Agency-Level Protest Final Decision at 1. Thereafter, the agency published the solicitation on FBO and extended the closing date of the solicitation. Id.

The protester initially filed a GAO protest on May 16, claiming that it was improper for the agency to reopen the proposal submission period after the solicitation had closed. On May 21, Mr. Scott withdrew his GAO protest in order to pursue an agency-level protest. After the agency-level protest was denied on May 24, Mr. Scott refiled his protest at GAO on June 3. GAO set the date for the agency's submission of its report for July 7. On June 18, the agency moved to dismiss the protest. On July 3, GAO informed the agency that its report requirement was suspended indefinitely while GAO considered the request for dismissal. Subsequently, GAO informed the parties that an agency report would be needed to resolve the protest.

On July 17, before filing its report, the agency informed GAO that it intended to take corrective action. On July 18, GAO dismissed the protest as academic.

Because the agency did not take corrective action until after the original report due date, the protester argues that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Thus, the protester argues that our Office should recommend that the Army reimburse protester's costs of filing and pursuing the protest. The agency opposes this request, arguing that it did not unduly delay taking corrective action and that the protest was not clearly meritorious.

Our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2008), provide that we may recommend that an agency pay protest costs where the agency decides to take corrective action in response to the protest. We will make such a recommendation, however, only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing a protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Information Ventures, Inc.-Costs, B-294567.2, Nov. 16, 2004, 2004 CPD ¶ 234 at 2. As a general rule, so long as an agency takes corrective action by the due date of its protest report, we regard the action as prompt, and will not consider a request to recommend reimbursement of protest costs. CDIC, Inc.-Entitlement to Costs, B-277526.2, Aug. 18, 1997, 97-2 CPD ¶ 52. This is the case even where the report due date was extended; in such circumstances, although the corrective action may have been somewhat delayed relative to the original report date, we do not consider this to be an undue delay, since it did not result in the protester's being put to the time and expense of filing comments in response to the report. The Sandi-Sterling Consortium – Costs, B-296246.2, Sept. 20, 2005, 2005 CPD ¶ 173 at 3 (citing TRS Research and Transport Planning and Servs., Inc.-Costs, B-290122.2, July 25, 2002, 2002 CPD ¶ 126 at 2); see also Singleton Enterprises-GMT Mechanical, Joint Venture-Costs, B-310454.3, Mar. 27, 2008, 2008 CPD ¶ 61 at 3-4 (no undue delay where agency did not file report, but instead, two days after the report was due, announced its intention to take corrective action).

Here, after GAO extended the time for the agency to file a report, the agency proposed corrective action in lieu of filing the report. Thus, the protester was not required to expend any additional time or resources preparing report comments, and the purpose of section 21.8(e) of our Regulations, discussed above, has been served.

Under these circumstances, we consider the corrective action to be prompt; it follows that there is no basis for recommending reimbursement of Brian X. Scott's protest costs.¹

Gary L. Kepplinger
General Counsel

¹ Since we decide this request for reimbursement of costs based on our finding that the agency did not unduly delay taking corrective action, we need not address whether the protest here was “clearly meritorious.”