



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Holloway & Company, PLLC—Costs

File: B-311342.5

Date: July 6, 2009

Brynee K. Baylor, Esq., Baylor & Jackson, PLLC, for the protester.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation for reimbursement of protest costs is dismissed where the protester initially filed its claim with the contracting agency; the agency agreed to reimbursement of a portion of the claim; the protester then asked the agency to reconsider its denial of the rest of the claim; and, after more than 8 months had passed without a response from the agency, the protester then filed a request for a determination of the amount of reimbursement at GAO. Delay in filing at GAO until more than 8 months had passed without receiving a response from the contracting agency (and with no attempt to follow up on its request with the agency) constitutes a failure to diligently pursue the claim.

DECISION

Holloway & Company, PLLC requests that we recommend the amount it should be reimbursed by the Department of Health and Human Services for filing and pursuing its protest in Holloway & Co., PLLC, B-311342.2, June 13, 2008.

We dismiss the request.

Holloway protested the non-selection of its quotation and the issuance of a task order by the Centers for Medicare and Medicaid Services (CMS) to Grant Thornton LLP under that firm's General Services Administration Federal Supply Schedule contract, pursuant to request for quotations No. APP 80128, for the performance of a self assessment review of CMS's internal controls over financial reporting, pursuant to Office of Management and Budget Circular, Appendix A, A-123. We dismissed the protest after the agency notified us that it intended to take corrective action in response to the protest consisting of reevaluating portions of the quotations and

making a new source selection decision. In our decision, we noted that the agency had acknowledged that the protester should recover its reasonable protest costs.

By correspondence dated July 3, 2008, the protester submitted a claim for costs totaling \$130,344 to counsel for the agency.¹ The protester reports that by letter dated September 5, 2008, the contracting officer rejected all but \$12,930 of its claim. (The protester did not furnish us with a copy of this correspondence.) By letter of September 15, Holloway asked the contracting officer to reconsider his decision; the protester furnished our Office with a courtesy copy of this letter. In the letter's final paragraph, Holloway noted that it was sending a copy of the letter to our Office to place us "on notice about the non-agreement between [the parties]." The protester asked the contracting officer to "reconsider CMS's position and honor the invoice that was submitted by Holloway;" in the event the contracting officer was unwilling to reconsider his position, the protester requested that our Office recommend the amount of costs that the agency should pay. Holloway did not communicate with our Office further regarding the matter until May 19, 2009, more than 8 months later, when it submitted the instant request for a recommendation of the amount it should be reimbursed.²

Our Bid Protest Regulations contemplate prompt resolution of protest matters, including claims for protest costs; accordingly, we require protesters to diligently pursue such claims. L-3 Comms. Corp., Ocean Sys. Div.—Costs, B-281784.5, Feb. 17, 2004, 2004 CPD ¶ 40 at 3. Here, Holloway waited more than 8 months after seeking reconsideration of the contracting officer's decision regarding its claim to ask our Office for a recommendation as to the amount of reimbursement; moreover, the

¹ While the protester asserts in its current submission to our Office that its July 3 claim was for \$69,509, a copy of the claim furnished to us by the protester reveals that the total amount sought was, in fact, \$130,853; \$69,509 represents the amount claimed for legal fees. The remainder of the total amount represents the amount that Holloway sought for protest costs incurred by its own employees (\$12,744) and the amount that it sought for its proposal preparation costs (\$48,600). There is no basis for Holloway to recover its proposal preparation costs; where, as here, an agency takes corrective action in response to a protest, we may recommend recovery of protest costs, but our recommendation does not extend to recovery of proposal preparation costs. Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2009).

² We did not regard the protester's September 15 letter to the contracting officer as a request to our Office for a recommendation as to the appropriate amount of reimbursement. The letter was not addressed to our Office; moreover, it sought our involvement on a contingent basis only, *i.e.*, in the event that the contracting officer was unwilling to reconsider his position regarding the protester's claim. Prior to submission of the instant request, we were never informed that the protester considered this condition to have been satisfied.

protester has furnished no evidence that it followed up on its request to the contracting officer at any point over the 8-month period.³ Under these circumstances, we think that the protester's actions demonstrate a lack of diligence in pursuing its claim to our Office. Because the protester failed to diligently pursue its claim to our Office, Holloway's request for a determination of reimbursable costs is dismissed.

Daniel I. Gordon
Acting General Counsel

³ This case thus is distinguishable from cases where the protester and the agency have engaged in continuing negotiations over a period of time. Here, in contrast, there is no indication that the agency invited Holloway to resubmit or otherwise further pursue the claim, or that Holloway made any attempt during the 8-month period to follow up on its request that the agency reconsider its claim.