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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Mapp Building Services--Costs

File: B-289160.2

Date: March 13, 2002

Walter Malyszek, Esq., Malyszek & Malyszek, for the protester.
Maria S. Kavouras, Esq., Environmental Protection Agency, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Request for protest costs is denied where agency agreed to take corrective action before protest report was due and there is no basis to find that it did not promptly implement the promised corrective action.

DECISION

Mapp Building Services requests that we recommend reimbursement of its protest costs incurred in connection with its protest of the award under Environmental Protection Agency (EPA) solicitation No. PR-CI-01-1222, for janitorial services.

We deny the request.

Mapp protested the award on October 12, 2001, complaining that EPA failed to hold meaningful discussions with Mapp and improperly evaluated proposals. On October 31, before the due date for the agency report, EPA informed us that it had found certain improprieties in the award, and would take corrective action. The agency advised that, at a minimum, it would issue any necessary solicitation amendments and reopen discussions. The agency also stated that it would leave the contract awarded in place pending the results of the evaluation of revised proposals. Consequently, we dismissed Mapp's protest as academic on November 2. EPA received the dismissal on November 8, and reopened discussions on January 15, 2002, with revisions due by January 28. Mapp filed this request for costs on January 29.

Under our Bid Protest Regulations, we may recommend that a protester be reimbursed the reasonable costs of filing and pursuing its protest, including

attorneys' fees, where the contracting agency decides to take corrective action in response to a protest. 4 C.F.R. § 21.8(e) (2001). We will do so, however, only where the contracting agency unduly delayed taking corrective action in response to a clearly meritorious protest. Veda, Inc.--Entitlement to Costs, B-265809.2, July 19, 1996, 96-2 CPD ¶ 27 at 2. Generally, we consider agency corrective action prompt where it is proposed before the agency's administrative report is due. Id. However, the proposed corrective action also must be promptly implemented by the agency, and we will recommend the award of protest costs where we find that it is not. Id.

Mapp maintains that it is entitled to recover its protest costs because, although EPA informed our Office that it would take corrective action before the report due date, it did not promptly implement the proposed corrective action. Specifically, Mapp complains that the agency delayed taking any action for 2½ months, until January 15 (when EPA sent Mapp a letter outlining the corrective action and reopening discussions). Mapp claims this delay was unreasonable and warrants our recommending that EPA pay its protest costs.

This argument is without merit. EPA reports that, in the period leading up to January 15, it reviewed the entire procurement process, including the RFP, evaluations and discussions that had taken place, and prepared an amendment that included changes to various clauses and provisions, including the statement of work. We think agencies must be accorded a reasonable amount of time to determine how best to proceed under circumstances such as those here. Given the activities undertaken by EPA, we do not think the delay that occurred before continuing the procurement here constituted an unreasonable delay.

Mapp also requests that it be reimbursed the costs it incurred in preparing the proposal it submitted in response to the solicitation. However, our Regulations do not provide for recovery of such costs where an agency has taken corrective action. See 4 C.F.R. § 21.8(e); Moon Eng'g Co., Inc.--Request for Declaration of Entitlement to Costs, B-247053.6, Aug. 27, 1992, 92-2 CPD ¶ 129 at 7. Moreover, we generally will not recommend payment of proposal costs where the protester will have the opportunity to compete for the requirement under a reopened competition. Id. at 7 n.7.

The request for costs is denied.

Anthony H. Gamboa
General Counsel