



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: World Communications Center, Inc.--Costs

File: B-310398.4

Date: January 16, 2008

Michael J. Murphy, Esq., Murphy Law Firm, P.A., for the protester.
James Hicks, Esq., and Sheryl Butler Jamison, Esq., Department of Justice, for the agency.
Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

GAO recommends that agency reimburse protester's costs of filing and pursuing earlier protests where agency does not contest the protester's request, and where the record shows that the agency did not take prompt corrective action in the face of a clearly meritorious protest.

DECISION

World Communications Center, Inc. (WCC) requests that our Office recommend that it be reimbursed the costs of filing and pursuing its protests of the award of a sole-source contract to NAL Research Corporation for satellite trackers under solicitation STTS-1168, issued by the Department of Justice, Drug Enforcement Agency (DEA).

We recommend that the DEA reimburse WCC its reasonable costs of filing and pursuing its protests.

In its earlier protests, B-310398 and B-310398.2, WCC argued that the DEA conducted an improper sole-source procurement, and wrongly denied WCC an opportunity to compete for the solicitation requirements by refusing to test its satellite trackers for compatibility with the DEA's tracking system. The agency produced a report responding to the protest allegations, and requested that our Office either deny the protests or dismiss them based on the agency's argument that WCC was not an interested party. Our Office convened a conference call during which the GAO attorney assigned to the protest identified concerns regarding the agency's rationale for the sole-source award, and indicated that the record as produced by the agency did not support the reasonableness of the sole-source award. The GAO attorney also

requested additional information from the DEA to supplement its report. Subsequently, however, the DEA advised our Office that it would take corrective action by terminating the award to NAL and canceling the solicitation. Because the agency's corrective action rendered the protest academic, we dismissed the protests on November 30, 2007.

Where an agency takes corrective action in response to a protest, our Office may recommend that a protester be reimbursed the costs of filing and pursuing that protest. Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2007). Such recommendations are generally based upon a concern that the agency has taken longer than necessary to initiate 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. See, e.g., AAR Aircraft Servs.-Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. A protest is clearly meritorious when a reasonable agency inquiry into the protest allegations would show facts disclosing the absence of a defensible legal position. The Real Estate Ctr.-Costs, B-274081.7, Mar. 30, 1998, 98-1 CPD ¶ 105 at 3.

Here, the DEA states that it “does not contest [WCC’s] request for reimbursement.”¹ Letter from DEA to GAO, Dec. 18, 2007, at 1. In the absence of any evidence to show that the DEA’s sole-source award determination was reasonable, and in view of the agency’s decision not to contest the request for reimbursement, we conclude that the protest was clearly meritorious. We also conclude that the DEA did not take prompt corrective action, as it did not terminate the award to NAL and cancel the solicitation until after the agency had produced its report on the protest, the protester had filed its comments on the report, and the GAO attorney assigned to the protest had requested additional information to supplement the record.

We recommend that the agency reimburse WCC its costs of filing and pursuing its protests.

Gary L. Kepplinger
General Counsel

¹ The agency also stated in its letter that it “does reserve the right to negotiate the final amount of costs after the Protester submits an itemized cost claim.” Letter from DEA to GAO, Dec. 18, 2007, at 1.