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**Comptroller General
of the United States**

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

Decision

Matter of: Barnes Aerospace Group--Costs

File: B-299870.2

Date: September 17, 2007

Jason A. Carey, Esq., Kara M. Klaas, Esq., and John G. Horan, Esq., McKenna Long & Aldridge, for the protester.

Maj. Chad L. Diederich, Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation that agency reimburse protest costs for second protest of an allegedly improper sole source award on the basis that the agency failed to promptly implement corrective action recommended by our Office in prior protest is denied where agency promptly proposed corrective action in response to second protest and protester's actions contributed to the delay in the agency's implementation of our original recommendations.

DECISION

Barnes Aerospace Group requests that our Office recommend reimbursement of its protest costs in connection with its protest of the Department of the Air Force award of an interim sole-source contract to Ferrotherm Corporation under request for proposals (RFP) No. FA8104-07-0401, issued by the Air Force to procure the repair of 2,431 F100 engine parts over an 11-month period. That protest was dismissed after the agency determined that corrective action was appropriate.

We deny the request.

On September 25, 2006, Barnes protested the decision of the Air Force to award a sole-source contract to Ferrotherm under RFP No. FA8104-06-R-0276, issued by the Air Force to procure the repair of certain F100 engine parts. Barnes argued that the Air Force unreasonably delayed review of Barnes' request for source approval, and awarded a sole source contract to Ferrotherm at an unreasonable price. In a supplemental protest, Barnes argued that the agency unfairly required Barnes to

comply with the agency's source approval rules, while ignoring requalification requirements in those same rules with regard to Ferrotherm.

Our Office sustained the protest on the basis that the agency improperly proceeded with a sole source award without considering the viability of Barnes as a second source as part of the agency's justification process and because the agency treated offerors unequally with respect to the application of its qualification requirements. We recommended, in part, that the Air Force proceed as expeditiously as possible with providing a part for repair to Barnes so that the source approval process could be completed, and that the Air Force reimburse the protester its costs of pursuing the protest. Barnes Aerospace Group, B-298864, B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 14.

According to the agency, the qualification process consists of two parts. After interested vendors complete Part I of the process, they are provided parts to perform the source demonstration repair under Part II. At the time of our December 2006 decision, Barnes was in the process of becoming a qualified source of repair for the engine rings. By memorandum dated August 8, 2006, the agency notified Barnes that it had satisfactorily met Part I of the qualification requirements but must meet the requirements of Part II, the source demonstration repair. The memorandum further informed Barnes that it would need to:

insure possession of drawings 4084052 and ST2252 and the associated [Quality Assurance Documents] and specifications prior to commencing with the Source Demonstration repair. In addition, the latest changes to the required repair Technical Orders will need to be obtained.

On January 29, 2007, approximately 1 month after our Office sustained Barnes's earlier protest, the Air Force again notified the protester that certain documentation concerning the drawings was missing and informed Barnes that it would not proceed to the repair demonstration phase until the missing documentation was provided. In response, on February 2, Barnes questioned the need for the requested data. On February 8, the agency responded that the missing data was needed because it covered details of the honeycomb ring segments which are not controlled by the technical data and to assure that the parts are manufactured to the blueprint specifications. Email from Air Force to Small Business Office dated Feb. 8, 2007 (which was forwarded to Barnes). Barnes subsequently provided the missing documentation to the Air Force on February 27. On March 19, three parts for repair were forwarded to Barnes. Barnes returned the repaired parts to the Air Force on May 31, 2007, and the parts were forwarded to a laboratory for analysis on June 13.

In the meantime, to meet an urgent need for the engine rings, on April 10, the Air Force issued a solicitation for repair of 2,431 engine rings for an 11-month period. On May 1, both Barnes and Ferrotherm submitted proposals. Since Ferrotherm was the only qualified source as of that date, award was made to Ferrotherm on May 21.

Barnes protested the award to our Office on June 11. On June 21, 10 days after the protest was filed, the Air Force advised our Office that it had decided to take corrective action. The Air Force decreased the award quantity from 2,431 units to 342 units, to cover its immediate needs while completing its review of Barnes' qualification request. In addition, the Air Force committed to completing all needed laboratory testing, analysis, and engineering review of Barnes' repaired parts in approximately 90 days. The Air Force further stated that it would initiate a new competitive procurement for a 5-year indefinite-delivery/indefinite-quantity repair contract. On July 11, we dismissed the protest as academic.

On July 26, Barnes filed this request for reimbursement of the costs it incurred pursuing its second protest.

Our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2007), provide that where an agency takes corrective action in response to a protest, our Office may recommend that the agency pay the protester its costs of filing and pursuing the protest. We have held that this regulation does not exist to award protest costs in every case in which an agency takes corrective action, but rather in those instances where an agency unduly delays taking corrective action in the face of a clearly meritorious protest. American Lawn Serv., Inc.—Entitlement to Costs, B-271039.2, May 15, 1996, 96-1 CPD ¶ 228 at 2.

Here, the agency's promised corrective action that resulted in dismissal of Barnes' second protest as academic was submitted 10 days after the second protest was filed. We agree with the agency that the corrective action here was not unduly delayed.

Barnes argues, however, that had the Air Force promptly qualified Barnes in compliance with our recommendation in our December 26, 2006, decision, Barnes would have had no need to pursue this second protest. Consequently, Barnes maintains that the Air Force's failure to implement our recommendation forced Barnes to incur the fees and costs of the follow on protest, and as a result, we should follow the rule established in our decision, Louisiana Clearwater, Inc.-Recon. and Costs, B-283081.4, B-283081.5, Apr. 14, 2000, 2000 CPD ¶ 209, where we held that the reimbursement of protest costs may be appropriate where an agency does not timely implement promised corrective action in response to an initial protest, and a subsequent protest was necessitated by the agency's failure to implement the promised corrective action.

Based on the record, we do not find that the agency failed to promptly implement our prior recommendations. As stated above, in response to our recommendations with respect to the first protest, on January 29, the Air Force specifically notified the protester that prior to receiving parts for repair, the protester needed to provide to the agency certain missing documents. The record also shows that Barnes was on notice of the agency's need for additional documentation since August 2006. Instead of submitting the missing documents, the protester questioned the agency's need for them. The protester finally submitted the requested documents almost a month after

the agency's January 29 request, and more than 6 months after the agency's initial request (on August 8). Upon receipt of the requested documents on February 27, the agency forwarded the parts for repair to the protester on March 19. The agency subsequently received the repaired parts from Barnes on May 31 and forwarded the repaired parts to the laboratory for analysis on June 13. The Air Force has now committed to completion of all needed laboratory testing, analysis and engineering review in approximately 90 days.

The record here demonstrates that the Air Force affirmatively attempted to implement our initial recommendation and complete the source approval process for Barnes, and that Barnes's failure to promptly provide the documents requested by the agency contributed to the delay in the source approval process. As a result, we conclude that Barnes should not be reimbursed the costs of filing the protest it submitted on June 11.

The request for our recommendation that Barnes be reimbursed its protest costs for its second protest is denied.

Gary L. Kepplinger
General Counsel