



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** ARINC Engineering Services, LLC

**File:** B-405731.3

**Date:** March 28, 2012

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Katherine S. Nucci, Esq., Timothy Sullivan, Esq., and Scott F. Lane, Esq., Thompson Coburn LLP, for the protester.  
Andrew Sinn, Esq., General Services Administration, for the agency.  
Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest was not clearly meritorious, and reimbursement of protest costs following agency corrective action therefore is not warranted, where additional record development and substantial further analysis would have been required to resolve protest.

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### DECISION

ARINC Engineering Services, LLC requests that we recommend that it be reimbursed the costs of filing and pursuing its protest challenging the General Services Administration's (GSA) issuance of a task order to General Dynamics One Source, LLC (GDOS), under request for quotations (RFQ) No. 4QDA57110003, for information technology support services at the Joint Air Defense Operations Center at Joint Base Anacostia-Bolling, Washington, DC.

We deny the request.

The RFQ provided for the issuance, on a "best value" basis, of a performance-based, time and materials task order for various core and optional support activities at the Joint Air Defense Operations Center. Proposals were to be evaluated under five factors: capability to perform, management approach, staffing plan, past performance, and price. Both ARINC's and GDOS's proposals received overall non-price ratings of significant confidence, and the task order was issued to GDOS based on its lower price.

After a debriefing, ARINC filed its initial protest asserting that GDOS's technical and price evaluations were flawed, and that the tradeoff failed to take into account ARINC's likely higher ratings under the different technical factors. In its agency report, GSA defended its evaluations and source selection, providing copies of the vendors' proposals and their individual factor evaluations. Subsequently, in its comments and supplemental protest, ARINC challenged virtually every strength assigned to GDOS's proposal under the non-price factors; asserted that its own technical evaluation was flawed, including alleged inconsistent treatment regarding the assignment of strengths and weaknesses; and specifically challenged the best value determination, including the alleged failure to take into account ARINC's superior rating under the most important technical factor.

In response, GSA filed a supplemental agency report (SAR) responding to some, but not all of ARINC's allegations; the agency asserted that many were simply the protester's mere disagreement. After reviewing the SAR and ARINC's comments, our Office submitted a detailed list of questions to GSA, requiring it to provide complete responses in some 15 areas where the SAR either had provided no information or only incomplete information in answer to ARINC's supplemental protest. Instead of submitting a second SAR, the agency informed our Office that it intended to take corrective action. Specifically, GSA advised that it would amend the RFQ to more accurately reflect its needs or cancel and reissue an amended RFQ, and "remedy any flaws in the process that require correction." Corrective Action Notice. We dismissed the protests as academic (B-405731, B-405731.2, Dec. 5, 2011).

ARINC requests that we recommend that it be reimbursed the reasonable costs of filing and pursuing its protests, including attorneys' fees. ARINC asserts that its protest grounds were clearly meritorious as evidenced by the agency's decision to take corrective action in the face of GAO's detailed inquiries regarding the basis for the evaluations. ARINC further asserts that GSA unduly delayed taking corrective action, as evidenced by its failure to do so until after the agency had filed an initial and supplemental agency report and ARINC had responded to both.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs where, based on the circumstances of the case, we determine that the agency unduly delayed taking 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. Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2011); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 6. Thus, as a prerequisite to our recommending that costs be reimbursed where a protest has been settled by corrective action, not only must the protest have been meritorious, but it also must have been clearly meritorious, i.e., not a close question.

J.F. Taylor, Inc.--Entitlement to Costs, B-266039.3, July 5, 1996, 96-2 CPD ¶ 5 at 3; Baxter Healthcare Corp.--Entitlement to Costs, B-259811.3, Oct. 16, 1995, 95-2 CPD ¶ 174 at 4-5; GVC Cos.--Entitlement to Costs, B-254670.4, May 3, 1994, 94-1 CPD ¶ 292 at 3. A protest is “clearly meritorious” where a reasonable agency inquiry into the protester’s allegations would reveal facts showing the absence of a defensible legal position. First Fed. Corp.--Costs, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2.

We find that reimbursement is not appropriate in this case. Even if we agreed that the agency’s corrective action was not prompt, the protest was not clearly meritorious. In this regard, ARINC’s protest was based on its assertions that the technical evaluations were flawed. However, while the agency’s corrective action contemplated amending the RFQ to more accurately reflect its needs and to remedy any flaws, the agency does not concede that its technical evaluations were indefensible. Further, based on the record here, it was not clear which party’s position was correct regarding the evaluation of proposals. For example, ARINC’s detailed challenges did not appear until its initial comments and, after review of the SAR, our Office had requested a second SAR from the agency to provide a more detailed response. In order to reach a decision on the matter, at a minimum, we required that second SAR and ARINC’s comments on it. Following this further development of the record, we would have had to conduct substantial further analysis of the parties’ positions. In such cases, we do not consider the protest grounds to be clearly meritorious. New England Radiation Therapy Mgmt. Servs., Inc.--Costs, B-297397.3, Feb. 2, 2006, 2006 CPD ¶ 30 at 4; LENS, JV--Costs, B-295952.4, Dec. 12, 2005, 2006 CPD ¶ 9 at 5; East Penn Mfg. Co., Inc.--Costs, B-291503.4, Apr. 10, 2003, 2003 CPD ¶ 83 at 2-3 (protest not clearly meritorious where decision would have required further steps to complete and clarify the record). We therefore decline to recommend reimbursement of ARINC’s protest costs.

The request for costs is denied.

Lynn H. Gibson  
General Counsel