



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Information Ventures, Inc.-Costs

**File:** B-407478.3

**Date:** April 5, 2013

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Bruce H. Kleinstein for the protester.  
Jason Blindauer, Esq., Department of Health and Human Services, for the agency.  
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Request for reimbursement of protest costs following corrective action is denied where the record does not establish that the protests were clearly meritorious.

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### DECISION

Information Ventures, Inc., of Philadelphia, Pennsylvania, requests that our Office recommend that the firm be reimbursed the costs of filing and pursuing its protests against the award of a contract to EnDyna, Inc., of McLean, Virginia, under request for quotations (RFQ) No. NIHLM2012396, issued by the Department of Health and Human Services (HHS) for chemical hazards emergency management.

We deny the request.

### BACKGROUND

The RFQ, issued as combined synopsis/solicitation under the simplified commercial acquisition procedures of Federal Acquisition Regulation Parts 12 and 13, provided for the award of a fixed-price labor hour contract for a base year and two option years. Vendors were informed that award would be made on a best value basis, considering technical approach, personnel, facilities/equipment, past performance, and price.

HHS received quotations from four firms, including Information Ventures and EnDyna. Award was made to EnDyna, and Information Ventures timely requested a debriefing. Prior to receiving a debriefing, Information Ventures protested to our Office, challenging the agency's technical evaluation and selection decision. In

response to the protest and before submitting its report, the agency notified our Office that it would take corrective action by reevaluating quotations, documenting the re-evaluation, and making a new selection decision. We dismissed the protest as academic. Information Ventures, Inc., B-407478, Oct. 25, 2012.

HHS re-evaluated the quotations, and again selected EnDyna for award. Information Ventures protested to our Office, without receiving a debriefing, challenging the agency's evaluation and selection decision. Prior to submitting its agency report, HHS informed our Office that it again would take corrective action because it discovered that it had made an error in its best value determination, and would make a new selection decision. We dismissed the protest as academic.<sup>1</sup> Information Ventures, Inc., B-407478.2, Jan. 10, 2013. Information Ventures timely filed its request that GAO recommend that HHS reimburse the firm's costs for pursuing the protests.<sup>2</sup>

## DISCUSSION

Information Ventures argues that reimbursement of its protest costs for both protests is warranted here because the agency unduly delayed taking corrective action in the face of its clearly meritorious protests. The protester complains that the agency's re-evaluation did not address its earlier protest contentions and repeated most of the mistakes alleged in the first protest. See Request for Costs at 1.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs, if, 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) (2012); AAR Aircraft Servs.-Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. 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. Yardney Technical Prods., Inc.-Costs, B-297648.3, Mar. 28, 2006, 2006 CPD ¶ 65 at 4.

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<sup>1</sup> Subsequently, HHS informed our Office that it had discovered some issues with one or more of the technical quotations, and, therefore, would also re-evaluate them.

<sup>2</sup> On April 1, HHS notified Information Ventures and our Office that it had selected another firm, AlphaTrac of Westminster, Colorado, for award.

Generally, where an agency takes corrective action by the due date of its report, we regard the action as prompt, and will not consider a request to recommend reimbursement of protest costs. A-Ability Med. Equip., Inc.-Costs, B-403256.3, Apr. 4, 2011, 2011 CPD ¶ 81 at 2. We have recognized, however, that the mere promise of corrective action, without reasonably prompt implementation, has the obvious effect of circumventing the goal of the bid protest system for the economic and expeditious resolution of bid protests. See Louisiana Clearwater, Inc.-Recon. and Costs, B-283081.4, B-283081.5, Apr. 14, 2000, 2000 CPD ¶ 209 at 6. Thus, where an agency fails to implement the promised corrective action, or implements corrective action that fails to address a clearly meritorious issue raised in an initial protest, such that the protester is put to the expense of subsequently protesting the very same procurement deficiency, the agency's action has precluded the timely, economical resolution of the protest. Id.

Even where a protester alleges that an agency failed to timely implement promised corrective action, our recommendation that an agency reimburse a protester its protest costs must be based upon a showing that a procurement statute or regulation has been violated. See A-Ability Med. Equip., Inc.-Costs, supra, at 3 n.3. The mere fact that an agency decides to take corrective action does not establish that a statute or regulation clearly has been violated. Contrack Int'l, Inc.-Costs, B-401871.3, Feb. 17, 2010, 2010 CPD ¶ 122 at 4.

Here, we have no basis to conclude that the agency has unduly delayed taking corrective action in response to a clearly meritorious protest. With respect to each protest, the agency promptly indicated that it would take corrective action. Neither the agency nor the protester provided any documentation of the agency's evaluation or selection decisions that would allow us to determine whether or not the protests were clearly meritorious. Although the protester maintains that it is entitled to reimbursement of its costs for filing the second protest because the agency failed to implement its promised corrective action, the record also does not establish that the agency failed to address the error alleged in the first protest.

The request for entitlement to protest costs is denied.

Susan A. Poling  
General Counsel