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**Comptroller General
of the United States**

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

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The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Office Design Group, Inc.--Costs

File: B-413166.6

Date: November 17, 2016

Joseph A. Whitcomb, Esq., Whitcomb, Selinsky, McAuliffe PC, for the protester.
Maura C. Brown, Esq., Department of Veterans Affairs, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation that procuring agency reimburse protest costs is denied where, although agency took corrective action by instituting a reevaluation of protester's quotation after filing its agency report, protester did not show that any initial protest grounds were clearly meritorious.

DECISION

Office Design Group, Inc., of Irvine, California, a small business, requests that our Office recommend that the Department of the Veterans Affairs reimburse the reasonable costs of filing and pursuing a protest of the award of Federal Supply Schedule blanket purchase agreements (BPA) to five vendors,¹ under request for quotations (RFQ) No. VA119-16-Q-0072 for healthcare facility furniture and related services for Veterans Health Administration facilities in particular regions or nationwide. We dismissed the protest as academic based on agency corrective action. ODG argues that the VA failed to take prompt corrective action in response to a clearly meritorious protest.

We deny the request.

¹ The successful lead vendors were Corporate Spaces, Inc., of Pasadena, California; Goforth & Marti, of San Diego, California; JPL Associates LLC, of Sarasota, Florida; King Business Interiors, Inc., of Columbus, Ohio; and Zoom, Inc., of Potomac, Maryland.

ODG filed its original protest on June 17, 2016, arguing that the VA had (1) unreasonably departed from representations to vendors that the agency would issue 15 to 17 BPAs overall, with five BPAs reserved for service-disabled veteran-owned small businesses (SDVOSB), such as ODG; (2) failed to give electronic notice of the results of the competition to ODG via the General Services Administration e-Buy system; (3) failed to provide a debriefing; (4) held discussions with other vendors but not with ODG; (5) selected vendors to receive BPAs without regard to the best value criteria in the RFQ; (6) failed to document the basis for the source selection; and (7) included a term in the RFQ that improperly discounted the statutory evaluation preference applicable to SDVOSBs. Protest at 1-2.

On July 20, the VA submitted an agency report and exhibits, which were offered by the agency as all relevant documents (or redacted portions of them) from the procurement file. On July 26, ODG submitted an email raising new grounds of protest, which it had identified from the agency report and the agency's documentation: that the VA improperly evaluated ODG's quotation as unacceptable based on an alleged failure to provide a small business participation plan (despite ODG being a small business), and that the record reflected that the VA had applied unstated or misleading evaluation criteria and further, allegedly had allowed one successful vendor to correct its quotation to meet the agency's criteria, while rejecting ODG's quotation for the same issue without permitting the firm a similar opportunity.

On July 28, the GAO attorney managing the protest contacted all parties to explain that our Office's initial review of the agency report led us to conclude that the exhibits to the agency report were inadequate for the GAO to assess the merits of the protest. As a result, the VA was asked to submit a new agency report along with its report on the supplemental protest issues. The new agency report was to provide specific relevant documents that should have been included originally, such as the full quotations submitted by the protester and three of the successful vendors, the relevant portions of evaluation and the source selection decision, and the agency's communications with those three successful vendors.

The following day, on July 29, the VA announced that it would take corrective action by reevaluating ODG's quotation and considering whether to issue an additional BPA to the firm. On August 2, our Office dismissed the protest as academic. On August 11, ODG submitted this request for a recommendation that the VA reimburse the firm's costs of filing and pursuing its protest.

ANALYSIS

Our Office may recommend reimbursement of protest costs, including reasonable attorneys' fees, 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. Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1)(A); Bid Protest Regulations, 4 C.F.R. § 21.8(e). A protest is clearly meritorious where a reasonable agency inquiry into the protest allegations would have shown facts disclosing the absence of a defensible legal position. First Fed. Corp.--Costs, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2. While we consider corrective action to be prompt if it is taken before the due date for the agency report responding to the protest; we generally do not consider it to be prompt where it is taken after that date. Alsalam Aircraft Co.--Costs, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 at 3.

The VA argues that, although it took corrective action after submitting its agency report, ODG's initial protest was not clearly meritorious. Additionally, to the extent that the agency was motivated to take corrective action by issues raised in ODG's supplemental protest, the action was prompt. Agency Opposition to Cost Request at 3.

ODG argues that the VA corrective action was not prompt, because it occurred after submission of the agency report in response to the initial protest, which ODG argues was clearly meritorious. Protester's Response at 2. In specific response to the agency's argument that the initial protest was not clearly meritorious, ODG provides no persuasive argument about the merits, but instead argues that the VA is at fault for failing to provide detailed, specific reasons for rejecting ODG's quotation in either the unsuccessful offeror letter, or in a debriefing. Id. at 2-3. ODG also argues that our Office should consider recommending reimbursement of costs because the VA has yet to complete the corrective action. Id. at 2.

ODG has not demonstrated that its initial protest was clearly meritorious. Based on the record before our Office, it appears that the VA took corrective action principally to ensure that the evaluation of ODG's quotation would be consistent with its evaluation of the other quotations, consistent with the terms of the RFQ, and consistent with applicable regulations. Cf. Debcon, Inc.--Costs, B-412298.3, Apr. 26, 2016, 2016 CPD ¶ 122 at 5 (small business protester specifically challenged lower evaluation rating under small business participation plan factor in initial protest). In our view, none of the grounds of protest in the initial protest here was sufficiently persuasive to support a view that the VA lacked a legally justifiable explanation to defend against the protest. Even though ODG argues that it only lacked information about the evaluation because the VA did not provide a sufficient explanation of its actions, or a debriefing, that argument is unpersuasive because ODG has not shown a legal requirement for the VA to provide a formal debriefing or a detailed explanation of the evaluation.² Rather, defects in a debriefing (assuming

² It is not apparent that even a detailed debriefing would have included information about the evaluation of other vendors sufficient to support the unequal treatment arguments raised by ODG in its supplemental protest.

one was legally required) or related post-award communications are procedural matters that do not involve the validity of an award. A1 Procurement, JVG, B-404618, Mar. 14, 2011, 2011 CPD ¶ 53 at 5. Accordingly, we do not consider the corrective action to have been the result of a clearly meritorious initial protest.

The request is denied.³

Susan A. Poling
General Counsel

³ To the extent that the corrective action addressed new issues raised in ODG's supplemental protest, it was taken before the scheduled August 1 due date for the supplemental agency report, so we regard it as prompt with respect to those issues.