



Decision

Matter of: Purple Heart Heroes, LLC

File: B-420802

Date: July 12, 2022

Richard B. O’Keeffe, Jr., Esq., Wiley Rein LLP, for the protester.
Gordon N. Griffin, Esq., and Kelsey M. Hayes, Esq., Holland & Knight LLP, for JTW Development, LLC, the intervenor.
Deborah K. Morrell, Esq., Department of Veterans Affairs, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

GAO will not consider further a protest where the procuring agency, in response to the protest, has offered to provide the remedy that our Office would recommend if we were to sustain the protest.

DECISION

Purple Heart Heroes, LLC (PHH), of Hampton, Connecticut, protests the Department of Veterans Affairs’ (VA) award of a lease to JTW Development, LLC (JTW), pursuant to request for lease proposals (RLP) No. 36C26121R0097, to provide space for an outpatient clinic near Tulare or Visalia, California. PPH challenges the award on the basis that the space offered by JTW is in a “high-risk floodplain.” Protest at 2-7.

We dismiss the protest.

In November 2021, the VA issued the solicitation, seeking space for a community-based outpatient clinic in or near Tulare or Visalia, California. *Id.* at 1. Among other things, the solicitation provided that “[a] Lease will not be awarded for any offered Property located within a 100-year floodplain unless the Government has determined that there is no practicable alternative.” *Id.*; see Protest exh. 1, RLP at 10.

On or before the January 12, 2022 closing date, responses were submitted by six offerors, including PHH and JTW. Protest at 2. On May 23, 2022, the agency announced the selection of JTW for award. On June 6, following receipt of a debriefing, PHH filed this protest.

By letter dated June 28, 2022, the agency filed its Notice of Corrective Action. In that letter, the agency stated that “VA will pay Protester’s reasonable proposal and protest preparation costs and filing fee, in addition to Protester’s reasonable attorney’s fees.” Notice of Corrective Action, June 28, 2022, at 1-2. The agency further verified that the lease had been awarded to JTW on May 23, 2022, before the protest was filed; stated that the lease “does not include a termination for convenience clause”; and requested dismissal of the protest on the basis that its corrective action offered the only remedy available. *Id.* at 1.

Our Office has consistently stated that, in the absence of a termination for the convenience of the government clause, we ordinarily will only recommend reimbursement of a protester’s proposal preparation costs. *See, e.g., Public Properties, LLC*, B-419414, B-419414.2, Feb. 9, 2021, 2021 CPD ¶ 78 at 11; *GOV Nat’l Healthcare Drive, LLC*, B-419258 *et al.*, Jan. 13, 2021, 2021 CPD ¶ 25 at 7; *Federal Builders, LLC--The James R. Belk Trust*, B-409952, B-409952.2, Sept. 26, 2014, 2014 CPD ¶ 285 at 8; *New Jersey & H Street, LLC*, B-311314.3, June 30, 2008, 2008 CPD ¶ 133 at 9; *Peter N.G. Schwartz Cos. Judiciary Square Ltd. P’ship*, B-239007.3, Oct. 31, 1990, 90-2 CPD ¶ 353 at 11. More broadly, we have explained that we will not consider protests that have no practical consequences, and that our Office will not generally render what would be, in effect, an advisory opinion. *See, e.g., Ferris Optical*, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 2.

Accordingly, where, as here, the agency’s intended action includes providing the full remedy our Office would recommend if we were to sustain the protest, we decline to further consider PHH’s protest.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel