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# Decision

**Matter of:** Global Dimensions, LLC--Costs

**File:** B-421404.4

**Date:** August 28, 2023

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Richard L. Moorhouse, Esq., Greenberg Traurig LLP, for the protester.  
Major Brittny N. Montgomery, Department of the Army, for the agency.  
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## DIGEST

Request for recommendation that protest costs be reimbursed is denied where the record does not establish that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest.

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## DECISION

Global Dimensions, LLC (GLD), a small business of Fredericksburg, Virginia, requests that our Office recommend it be reimbursed the costs associated with pursuing its protest of the issuance of a task order to Arrow Security & Training LLC (AST), a small business of Nashua, New Hampshire. The Department of the Army issued the task order for linguist services under request for task order proposals (RFTOP) No. W50NH9-21-R-CON3. The protester argues that the agency unduly delayed taking corrective action in response to its clearly meritorious protest.

We deny the request.

## BACKGROUND

On December 15, 2022, the agency issued a task order to AST; GLD filed a protest with our Office on January 11, 2023, arguing that the agency's evaluation of proposals was unreasonable. Resp. to Req. for Costs, exh. 1, Corrective Action Memorandum at 1. On April 13, the agency filed a request for dismissal, stating that it intended to take corrective action in a related protest that would render GLD's protest academic. Specifically, the agency indicated it would reevaluate all proposals, make a new tradeoff decision, and if warranted, reissue the task order. *Id.* at 4-5. We dismissed the protest as academic on April 17. *Global Dimensions, LLC*, B-421404.1, B-421404.3,

Apr. 17, 2023 (unpublished decision). On April 24, GLD filed this request for a recommendation that its costs be reimbursed.

## DISCUSSION

GLD argues that the reimbursement of its protest costs is warranted here because its protest was clearly meritorious and the agency's decision to take corrective action after the submission of the agency report constituted undue delay. For the reasons discussed below, we deny the request.

When an agency takes corrective action in response to a protest, we may recommend the agency reimburse the protester its protest costs if, under the circumstances, we determine the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. 4 C.F.R. § 21.8(e); *Information Ventures, Inc.--Costs*, B-294580.2 *et al.*, Dec. 6, 2004, 2004 CPD ¶ 244 at 2. In other words, to prevail in its request, the protester must show (1) the agency unduly delayed taking corrective action, and (2) its protest was not only meritorious, but clearly meritorious. *Triple Canopy, Inc.--Costs*, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3. Our Office generally views an agency's action as prompt, that is, the agency did not unduly delay taking corrective action, when the corrective action is taken prior to the due date and time for submission of the agency report. *PNS Holdings, LLC.--Costs*, B-418798.3, Oct. 1, 2020, 2021 CPD ¶ 93 at 2-3. Additionally, a protest is clearly meritorious only if a reasonable agency inquiry into the protest allegations would show facts disclosing the absence of a defensible legal position. *Technatomy Corp.; Octo Consulting Grp., Inc.--Costs*, B-413116.49, B-413116.50, Dec. 14, 2016, 2016 CPD ¶ 366 at 3.

As an initial matter, the only specific protest ground that GLD claims was "clearly meritorious" is its argument that AST's proposal could not have reasonably received an overall technical rating of "outstanding." See *Resp. to Agency Resp. to Req. for Costs* at 3. In this regard, GLD argues that the agency subverted the stated evaluation criteria by giving "undue weight" to the management plan subfactor and thus, should have taken corrective action. *Id.* The agency responds that it "look[ed] beyond the ratings" and reasonably concluded the strengths assigned to AST's proposal justified the overall rating and award. *Resp. to Req. for Costs* at 12-13.

We have no basis to recommend the reimbursement of GLD's protest costs here because the record indicates that the agency had a defensible legal position. Although GLD objects to the adjectival rating assigned to the AST's technical proposal, our Office has previously explained that adjectival ratings serve only as a guide to, and not a substitute for, intelligent decision making, *LOGC2, Inc.*, B-416075, June 5, 2018, 2018 CPD ¶ 204 at 10, and that an agency's evaluation is to be based on a qualitative assessment of the relative merits of the competing proposals. *SRA Int'l, Inc.*, B-407709.5; B-407709.6, Dec. 3, 2013, 2013 CPD ¶ 281 at 12-13. Here, the agency explained that the four strengths AST's proposal received under the management plan subfactor for [REDACTED] led the agency to "reasonably determine" that these features were of such benefit to the agency that they justified the proposal's price premium.

Resp. to Req. for Costs at 11-13. The fact that these four strengths were assigned to AST's proposal under one of the less important subfactors does not, in itself, indicate that the agency's position was unreasonable. Moreover, determining whether the agency ultimately would have prevailed with this defense is beyond the scope of our analysis here. Instead, we consider only whether the record indicates that the agency presented a defensible legal position, which it did here. Thus, GLD's protest ground was not clearly meritorious.

With respect to the remainder of its protest, GLD raises only a broad argument that if our Office finds arguments raised by a different protester to be clearly meritorious, then we "should find the same degree of entitlement for GLD's similar grounds of protest." Resp. to Agency Resp. to Req. for Costs at 2. GLD's argument rests on the assumption that it raised meritorious arguments similar to those raised by the other protester. As established by our decisions, the determination of whether to recommend the reimbursement of costs rests on the factual and legal posture of each individual protest, which must be analyzed on a case-by-case basis. See *e.g.*, *Booz Allen Hamilton, Inc.--Costs*, B-420116.4, B-420116.5, July 27, 2022, 2022 CPD ¶ 194 at 6; *JRS Staffing--Costs*, B-410708.3, Nov. 9, 2015, 2015 CPD ¶ 349 at 5.

The protest arguments raised by the other protester were distinct from the protest arguments raised by GLD. For example, one of the issues that led the agency to take corrective action was the other protester's challenge to the agency's evaluation of AST's proposed number of captured incumbent linguists. Resp. to Req. for Costs, exh. 1, Corrective Action Memorandum at 3-4. Notably, GLD did not raise this specific challenge, nor did it raise any of the other specific challenges raised in the other protest. Further, GLD does not explain why its protest arguments were clearly meritorious, other than as stated above, that a different protester's arguments were clearly meritorious. Because the two protesters did not raise the same arguments, GLD fails to articulate why its protest arguments were clearly meritorious, and the record otherwise shows that the agency had a defensible legal position with respect to the arguments GLD raised in its protest, we have no basis to grant GLD's request.

The request for a recommendation for the reimbursement of costs is denied.

Edda Emmanuelli Perez  
General Counsel