



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Lawn Service, Inc.--Entitlement to Costs

File: B-271039.2

Date: May 15, 1996

Henry P. Wall, Esq., Haynsworth, Marion, McKay & Guerard, for the protester.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to protest costs where the agency took corrective action in response to the protest approximately 1 month after the protest was filed and before filing a report defending against the protest.

DECISION

American Lawn Service, Inc. requests that we recommend that it be reimbursed for its costs of pursuing its protest against the award of a contract to Maintenance Engineers under request for proposals (RFP) No. N62755-94-R-2826, issued by the Department of the Navy, Naval Facilities Engineering Command, for grounds maintenance and tree trimming services for Central and West Oahu, Hawaii.

We deny the request.

American Lawn first protested the award to Maintenance Engineers on August 11, 1995. We sustained that protest in American Lawn Serv., Inc., B-267715, Dec. 20, 1995, 95-2 CPD ¶ 278. We recommended that the agency either evaluate proposals based on the best value basis stated in the RFP, including a price realism provision which apparently was not adequately considered, or amend the RFP to provide for award on a lowest-priced, technically acceptable basis and solicit revised proposals on that basis. We also found that American Lawn was entitled to reimbursement of its costs of pursuing that protest.

In response to our decision, the agency again selected Maintenance Engineers's proposal for award on a best value basis. American Lawn protested this action to our Office on February 5, 1996. On February 8, the agency informed our Office that it was considering corrective action in response to the protest. On March 11, the agency notified our Office that it had amended the RFP to provide for award on a lowest-priced, technically acceptable basis and would request revised proposals. We dismissed American Lawn's second protest because the agency had taken

corrective action, rendering the protest academic. American Lawn now contends that, since the agency took corrective action in response to its second protest, American Lawn is entitled to reimbursement of its costs of pursuing the second protest.

Where a contracting agency takes corrective action in response to a protest, our Office may recommend that the agency pay the protester the costs of filing and pursuing the protest. 4 C.F.R. § 21.8(e) (1996). The intention behind implementing this regulation was not to award protest costs in every case in which an agency takes corrective action, but rather where an agency unduly delays taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558; R.J. Sanders, Inc.--Claim for Costs, B-245388.2, Apr. 14, 1992, 92-1 CPD ¶ 362.

Here, within a few days of American Lawn's second protest, the agency had reviewed the protest and determined that corrective action might be appropriate. The contracting activity implemented corrective action a little more than 1 month after the protest was filed. The agency did not submit a report in response to the protest, and thus the protester did not expend time or money in responding to a report. Under the circumstances, the agency was reasonably prompt in taking corrective action in response to this protest and, as a result, a recommendation for protest costs is not warranted. See id.

The request that we recommend reimbursement of protest costs is denied.

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