



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Veda Incorporated--Entitlement to Costs

File: B-265809.2

Date: July 19, 1996

Donald W. Fowler, Esq., William J. Cople III, Esq., and Robert J. Symon, Esq.,
Spriggs & Hollingsworth, for the protester.

Thomas T. Basil, Esq., Department of the Navy, for the agency.

Mary G. Curcio, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for entitlement to protest costs is denied where agency stated prior to the due date for the agency report that it would take corrective action--reopen discussions, request an additional round of best and final offers and reevaluate the award decision--and it acted without undue delay in its implementation of the proposed corrective action.

DECISION

Veda Incorporated requests that our Office find Veda entitled to reimbursement by the Department of the Navy for the reasonable costs of filing and pursuing its protest against the award of a contract to The Analytical Sciences Corporation (TASC) under request for proposals (RFP) No. N61339-94-R-0013, for system integration services.

We deny the request.

The Navy awarded a cost-plus-fixed-fee contract to TASC after holding discussions and receiving best and final offers (BAFO). On August 10, 1995, at a debriefing following the award, Veda learned that because its proposed overhead rates--which were based on establishing a new cost center--had not been audited by the Defense Contract Audit Agency (DCAA), the Navy instead had used provisional billing rates to evaluate Veda's cost proposal and, as a result, had upwardly adjusted Veda's proposed cost. On August 19, Veda protested the evaluation of its proposal (B-265809), concluding that the cost/technical tradeoff was invalid, and also argued that the agency improperly had failed to conduct proper discussions with Veda. On September 20, before the due date for the agency report on the matter, the Navy notified our Office that in response to the protest it would reopen discussions with

respect to the cost proposals, request an additional round of BAFOs, and reevaluate the award decision. As a result, we dismissed the protest on September 29.

Under our Bid Protest Regulations, we may declare a protester entitled to recover the reasonable costs of filing and pursuing its protest, including attorneys' fees, where the contracting agency decides to take corrective action in response to a clearly meritorious protest. 4 C.F.R. § 21.6(e) (1995). We will do so where the procuring agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Ferguson-Williams, Inc.--Entitlement to Costs, B-252947.5, Sept. 15, 1993, 93-2 CPD ¶ 166. Generally, we consider agency corrective action prompt where it is proposed before the agency's administrative report is due. See Kertzman Contracting, Inc.; Centigrade, Inc.--Entitlement to Costs, B-259461.2; B-259461.3, May 3, 1995, 95-1 CPD ¶ 226. However, proposed corrective action also must be promptly implemented by the agency. Commercial Energies, Inc.--Recon. and Declaration of Entitlement to Costs, 71 Comp. Gen. 97 (1991), 91-2 CPD ¶ 499.

The Navy informed our Office that it would take corrective action before the protest report was due. (The agency subsequently reported that reopening discussions with respect to cost proposals was necessary because of its failure to raise certain cost issues during the initial discussions.) Veda maintains its costs nevertheless should be reimbursed because the Navy did not promptly implement the proposed corrective action.

We disagree. The record indicates that the Navy submitted written discussion questions to Veda on November 9, conducted oral discussions with Veda on November 27, received Veda's written response to the discussion questions on December 11, requested an audit by DCAA, submitted further written discussion questions on December 21, conducted additional oral discussions with Veda on January 4, 1996, received Veda's written response to the additional discussion questions on January 12, and received a second round of BAFOs on January 22. Based upon its evaluation of the proposals, the agency affirmed its original award to TASC on February 19.

While it may be that the agency could have completed the corrective action proposed on September 20--reopening negotiations, requesting a new round of BAFOs and reevaluating--in less than the 5 months required here, there is no basis for finding the period to be unusually lengthy in the context of negotiated procurements generally. Further, we note that much of the delay appears to have resulted from the agency's understandable concern with Veda's proposal of a new cost center with lower overhead rates; the agency sought to resolve its concerns through further negotiations and referral of the proposal to the DCAA.

In any case, the agency's delay did not prejudice Veda. In this regard, while several task orders were issued to TASC under the protested contract during the delay,

given the agency's affirmation of its original award to TASC (which Veda has not protested), the task orders awarded to TASC did not deprive Veda of any contract work.

The request for costs is denied.

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