

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-221383.2

DATE: May 27, 1986

MATTER OF: Bru Construction Co., Inc.

DIGEST:

1. Protest challenging invitation for bids (IFB) as defective for lack of sufficient detail is dismissed as academic where contracting agency cancels the challenged IFB and plans to issue revised IFB responsive to issues raised by protester. Even if, as protester contends, agency actually plans to perform work in-house rather than issue a revised IFB, cancellation of the IFB renders the protest academic since no award will be made under the challenged IFB.
2. There is no basis for the award of protest costs where the protest is dismissed as academic, since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

Bru Construction Co., Inc., protests any award under invitation for bids (IFB) No. N62470-85-B-4107 issued by the Navy for family housing maintenance at the U.S. Naval Base, Guantanamo Bay, Cuba. We dismiss the protest as academic and deny the protester's claim for costs.

In its initial protest letter, Bru argued that the IFB was defective in various respects, principally because it lacked sufficient detail about a wide range of replacement parts which the contractor was required to furnish. In response to the issues raised by Bru, the Navy issued amendment No. 3 revising the IFB. In comments filed after amendment No. 3 was issued, Bru argued that the amendment had failed to cure all the defects identified in the initial protest and in fact had created new problems with the IFB.

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In a report subsequently filed with our Office, the Navy agreed with Bru's essential allegations and advised that the IFB would be canceled. The Navy stated that it had decided to cancel rather than amend the IFB because of the number and scope of revisions required in the workload and replacement parts data. The report also stated that a new IFB would be issued at a later date. Since no award will be made under the canceled IFB, Bru's protest regarding that IFB is academic and will not be considered on the merits. See U.S. PolyCon Corp., B-218203, Mar. 28, 1985, 85-1 CPD ¶ 373.

Bru also requests that it be awarded the costs of filing and pursuing the protest, including attorney's fees. We deny Bru's claim. As we stated in Monarch Painting Corp., B-220666.3, Apr. 23, 1986, 86-1 CPD ¶ _____, our authority to allow the recovery of such costs under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3554(c)(1) (West Supp. 1985) and our implementing regulation, 4 C.F.R. § 21.6(d) (1985), is predicated on a determination by our Office that a solicitation, proposed award, or award of a contract does not comply with a statute or regulation. Where, as here, a protest is dismissed as academic, there is no decision on the merits of the protest and thus no basis for the award of costs.

Apparently recognizing that a decision on the merits is a prerequisite to an award of protest costs under CICA, Bru argues that we should determine the merits of its protest even though the challenged IFB has been canceled, since the Navy has not yet taken the corrective action Bru requested. Specifically, Bru states that in a recent address to the residents of the Guantanamo Bay Naval Base, the Officer in Charge, Facilities Support Contracts, said that instead of issuing a revised IFB, the Navy plans to perform in-house the maintenance services called for under the canceled IFB. Bru argues that since it thus is unclear whether the Navy will issue a revised IFB as Bru had requested in its protest, our Office should determine whether the canceled IFB was defective as Bru contended, and thus whether Bru is entitled to recover its protest costs. We find Bru's argument unpersuasive.

The Navy's report on the protest states that a revised IFB will be issued soon, indicating that, contrary to Bru's contention, the Navy intends to grant the relief Bru requested. Where, as here, the agency agrees with the protester's allegations and plans to take corrective action, the underlying protest is academic. See Atkinson Dredging Co., B-218633, July 11, 1985, 85-2 CPD ¶ 41.

Further, even assuming as Bru contends that the Navy does not issue a revised IFB, Bru's protest challenging the canceled IFB still is academic. Whether a protest is academic does not necessarily depend on whether the agency takes the corrective action requested by the protester; rather, when a challenged solicitation is canceled, the underlying protest becomes academic since no award will be made under the solicitation. See Sunbelt Industries, Inc., B-214414, July 20, 1984, 84-2 CPD ¶ 66; Synergetics International, Inc., B-212553, Oct. 3, 1983, 83-2 CPD ¶ 405. Thus, even where a solicitation is canceled for reasons unrelated to the issues raised by the protester, the protest is academic.^{1/} See Master Painting Contractors, et al., B-208648, et al., Nov. 8, 1982, 82-2 CPD ¶ 412 (IFB canceled due to lack of funds).

Since Bru's protest is academic, we will not decide the merits of its allegations regarding the canceled IFB. Without a decision on the merits of the protest, there is no basis under CICA for allowing Bru's claim for award of costs. Monarch Painting Corp., B-220666.3, supra.

The protest is dismissed and the claim denied.



Harry R. Van Cleve
General Counsel

^{1/}In such cases, the protester may challenge the cancellation if the protester believes it is improper. Bru does not contend that the cancellation in this case was improper.