



The Comptroller General
of the United States

Washington, D.C. 20548

Reback - PL

Decision

Matter of: Pacific Sky Supply, Inc.--Award of Costs
File: B-225420.2
Date: August 17, 1987

DIGEST

Award of costs of filing and pursuing protest, including attorney's fees is granted for issues on which protester prevailed in initial decision, where protester has been excluded unreasonably from competition and our original recommendation, as reasonably implemented by agency, does not in fact result in protester having opportunity to compete for award.

DECISION

By this decision, we award Pacific Sky Supply, Inc., its costs of filing and pursuing its protest, including attorney's fees.

Pacific Sky Supply, Inc., initially protested to our Office in October, 1986, the Department of the Air Force's award of various line items to United Technologies Corporation, Hamilton Standard Division, under solicitation No. FD2060-86-55538. The contract is for the acquisition of spare parts for the C-130 aircraft. Pacific Sky argued in its original protest that the Air Force had unreasonably excluded it from competing for award of various line items contained in the solicitation by awarding a sole-source contract to Hamilton Standard under 10 U.S.C. § 2304(c)(1) (Supp. III 1985), without first adequately synopsisizing the proposed contract award as required by law. Specifically, Pacific Sky complained that 15 line items had been awarded to Hamilton Standard but that adequate notice had been published for only two of those items. The protester also specifically requested that we award it the costs of filing and pursuing its protest, including attorney's fees.

In our original decision, we held that Pacific Sky was unreasonably excluded from an opportunity to compete for the 13 contract line items which were not properly synopsisized.

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Pacific Sky Supply, Inc., B-225420, Feb. 24, 1987, 87-1 CPD ¶ 206. Our recommendation in that decision stated in pertinent part:

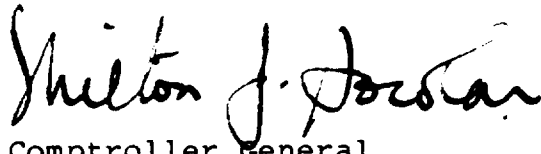
". . . we are recommending . . . that, to the extent consistent with agency needs, . . . [the line items] . . . be resynopsized and Hamilton Standard's contract with respect to those items be terminated for the convenience of the government if public response to the synopsis now indicates that a competitive procurement should be conducted."

By letter dated May 6, 1987, the Air Force has informed our Office that, due to the urgency of the agency's need for the requirements under the 13 contract line items, they will not at this time resynopsize the requirements. Thus, the agency will not provide Pacific Sky or any other prospective contractor an opportunity to express an interest in the procurement. We note that the agency also stated that it is in full compliance with our recommendation since that recommendation provides that its implementation should be "consistent with agency needs."

We have no basis to object to the agency's implementation of our recommendation in light of the urgency of its needs for the contract requirements; an urgency determination has been properly made under 10 U.S.C. § 2304(c)(2) (Supp. III 1985), and the Air Force documented this determination. However, we believe that circumstances warrant the award of the costs of filing and pursuing the protest, including attorney's fees, to Pacific Sky. Our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1987), permit the recovery of protest costs where the contracting agency has unreasonably excluded the protester from the procurement, except where this Office recommends that the contract be awarded to the protester and the protester receives award. Where, however, a protester has been unreasonably excluded from the competition because of an improper sole-source determination, we have found the award of costs appropriate. The Aydin Corporation; Department of the Army--Request for Reconsideration, B-224908.3, et al., May 19, 1987, 87-1 CPD ¶ 527.

Accordingly, we modify our original decision to include an award of the costs of filing and pursuing its protest, including attorney's fees, to Pacific Sky. We limit the award of costs to those costs incurred in protesting the 13 line items on which Pacific Sky prevailed in our initial decision, since we expressly denied the protest as to the

two line items which were properly awarded under 10 U.S.C. § 2304(c)(2) (Supp. III 1985). Interface Flooring Systems, Inc.--Claim for Attorney's Fees, B-225439.5, July 20, 1987, 87-2 CPD ¶ ____. Therefore, we recommend that the protester's entitlement to protest costs should be reduced accordingly. Pacific Sky should submit its claim for reimbursement of these costs directly to the Air Force, and if the parties cannot reach agreement within a reasonable time, this Office will determine the appropriate amount to be paid. 4 C.F.R. § 21.6(f).

for 
Comptroller General
of the United States