



The Comptroller General
of the United States

Washington, D.C. 20548

Brown - PL

Decision

Matter of: Fischer & Porter Company--Claim for Costs
File: B-227941.2
Date: November 25, 1987

DIGEST

Where the General Accounting Office sustains protest and recommends that the United States Army Corps of Engineers reinstate the protester as the low responsible offeror for purposes of an Office of Management and Budget Circular No. A-76 cost comparison, the award of the protester's costs of filing its protest, including attorney's fees, is inappropriate.

DECISION

Fischer & Porter Company (F&P) requests that we modify our recommendation in Fischer & Porter Co., B-227941, Oct. 28, 1987, 87-2 CPD ¶ _____, to include a grant of the firm's costs of filing and pursuing its protest, including attorney's fees, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(d) and (e) (1987). We deny the request for costs.

In our original decision we recommended that the United States Army Corps of Engineers reinstate F&P as the low responsible offeror for purposes of the Office of Management and Budget (OMB) Circular No. A-76 cost comparison in the subject procurement on grounds that F&P had been improperly found nonresponsible for insufficient cost documentation. We also recommended that the Army allow or disallow specific dollar amounts of F&P's claimed fringe benefit costs prior to conducting the A-76 cost comparison. If F&P's offer was then found not to be low due to the Army's disallowance of some or all of its claimed costs, F&P should be afforded the opportunity to subject that determination to the A-76 appeals process.

F&P argues that since we did not recommend contract award in this case, an award of protest costs is appropriate. F&P

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directs our attention to Tandem Computers, Inc., 65 Comp. Gen. 490 (1986), 86-1 CPD ¶ 362; Consolidated Devices, Inc.--Reconsideration, B-225602.2, Apr. 24, 1987, 87-1 CPD ¶ 437 and Catamount Construction, Inc., B-225498, Apr. 3, 1987, 87-1 CPD ¶ 374, as instances where we have permitted protest costs to be awarded when we recommended resolicitation rather than contract award.

Our regulations permit the recovery of the costs of filing and pursuing a protest in situations where the protester is unreasonably excluded from the procurement, except where this Office recommends that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(e). As F&P points out, we have allowed protest costs where we found that an agency action such as a sole-source award or a restriction on competition was improper and recommended that the requirement be resolicited. We have allowed costs in these cases because in our view, sustaining protests concerning sole-source or restrictive procurements furthers the purpose of the statutory requirement for full and open competition. Tandem Computers, Inc., 65 Comp. Gen. 490, supra. Here, however, the subject matter of the protest does not concern a competition restriction. Moreover, we have recommended that F&P be reinstated as the low responsive offeror, and consequently contract award may be made to F&P after completion of the A-76 cost comparison procedures. Therefore we regard the relief offered F&P--the opportunity to secure contract award upon a successful A-76 cost comparison--to be sufficient remedy within the intent of our regulations, without granting protest costs as an additional remedy. See Environmental Tectonics Corp., B-225474.5, July 28, 1987, 87-2 CPD ¶ 96.

The claim is denied.


James F. Hinchman
General Counsel