



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sperry Marine, Inc.--Claim for Bid Protest Costs

File: B-227106.8

Date: March 29, 1988

DIGEST

Protester may not recover the costs of filing and pursuing a bid protest where the protest has been sustained and the remedy afforded the protester is the opportunity to submit a revised proposal in reopened negotiations, which will be reevaluated on the basis of relaxed requirements, since the initial unreasonable exclusion of the protester's proposal has been corrected.

DECISION

Sperry Marine, Inc., has requested reimbursement of the costs it incurred in filing and pursuing a bid protest in connection with request for proposals (RFP) No. N00024-86-R-5664(Q), issued by the Department of the Navy to procure a radar system. Our Office sustained Sperry Marine's protest on September 14, 1987, on the basis that the contracting activity improperly had issued a contract modification relaxing certain mandatory performance specifications set forth in the RFP simultaneous with the award of a contract to Norden Systems, Inc. See Sperry Marine, Inc. et al., B-227106 et al., Sept. 14, 1987, 87-2 CPD ¶ 241; aff'd, Norden Systems, Inc. et al., B-227106.3 et al., Oct. 16, 1987, 87-2 CPD ¶ 367. We hold that Sperry Marine is not entitled to reimbursement of its protest costs.

At the time of our decision on Sperry Marine's protest, our Bid Protest Regulations (4 C.F.R. § 21.6 (1987)) stated:

"(d) If the General Accounting Office determines that a solicitation, proposed award, or award does not comply with statute or regulation it may declare the protester to be entitled to reasonable costs of:

"(1) Filing and pursuing the protest, including attorney's fees . . .

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"(e) The General Accounting Office will allow the recovery of costs under paragraph (d)(1) of this section where the contracting agency has unreasonably excluded the protester from the procurement except where the General Accounting Office recommends . . . that the contract be awarded to the protester and the protester receives the award."

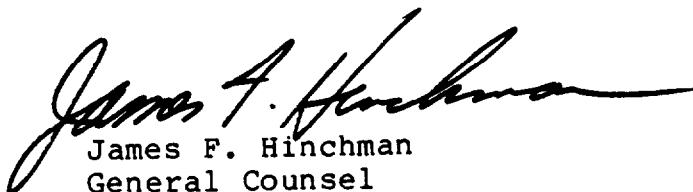
In support of its position that it is entitled to protest costs under the quoted standard, Sperry Marine cites our decision in Tandem Computers, Inc., 65 Comp. Gen. 490 (1986), 86-1 CPD ¶ 362. In that case, the Navy issued an RFP on a brand name or equal basis for computer hardware and software and related items. The RFP listed the salient characteristics of the desired equipment, but the Navy awarded the contract to a firm whose equipment did not comply in several respects with the RFP's stated salient characteristics. We held that the Navy had improperly relaxed its requirements without amending the RFP. We recommended that the Navy terminate the improperly awarded contract for the convenience of the government and that the Navy resolicit on the basis of revised specifications reflecting the Navy's actual needs, and we also held that the protester was entitled to its protest costs.

The cited decision is distinguishable from the present case and, therefore, is not controlling. The protester in Tandem Computers, Inc., had indicated that, had it known that the Navy's actual needs were for less specialized equipment than the solicitation originally requested, it might well have elected not to compete. In other words, due to the specialized, more expensive nature of the equipment generally manufactured by Tandem Computers, there was serious doubt whether the firm would even respond to and benefit from the resolicitation. Here, however, Sperry Marine clearly benefits from the reopened competition as it has been given an opportunity to submit a revised proposal that will be evaluated against the relaxed specifications.

Under the above-quoted Bid Protest Regulations, recovery of the costs of filing and pursuing a protest is permitted only where the protester was unreasonably excluded from the procurement, unless we recommend that the contract be awarded to the protester and the protester actually receives

the award. Where, as here, the result of our recommendation is that a protester whose proposal was improperly rejected is given the opportunity to compete for award, the unreasonable exclusion is thereby corrected. See Federal Computer Corp., B-223932, Dec. 10, 1986, 86-2 CPD ¶ 665. Thus, the recovery of the costs of filing and pursuing the protest would be inappropriate. The Hamilton Tool Co., B-218260.4, Aug. 6, 1985, 85-2 CPD ¶ 132.

The claim for bid protest costs is denied.


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General Counsel