



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harwell Construction Company, Inc.

File: B-229549.2

Date: April 13, 1988

DIGEST

Where protester that submitted low bid after being invited to participate in converted negotiated procurement successfully challenges a proposed award to sole bidder that bid an unreasonable price under invitation for bids, and where the General Accounting Office recommended cancellation and resolicitation based on full and open competition, protester is entitled to recover the costs of filing and pursuing the protest, since such award is consistent with the broad purpose of the Competition in Contracting Act to increase and enhance competition in federal procurements.

DECISION

Harwell Construction Company, Inc. has submitted a claim for reimbursement of its proposal preparation costs and the costs of filing and pursuing its protest which we sustained in Harwell Construction Company, Inc., B-229549, Mar. 17, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ _____.

We grant the claim for Harwell's costs of filing and pursuing its protest and deny the claim for its proposal preparation costs.

The protest involved request for proposals (RFP) No. DAHA12-87-R-0005, issued by the National Guard Bureau for the construction of a record fire range. The National Guard Bureau had initially issued an invitation for bids (IFB) and subsequently converted it to an RFP after receiving only one bid, offering an unreasonable price, in response to the IFB. After inviting the protester to participate in negotiations for award of the contract and finding Harwell to be the apparent low responsible offeror, the agency notified the protester that it could not be awarded the contract since Harwell did not submit a bid under the original IFB. The agency proposed award to Jud Construction Company, Inc. which had submitted the only bid in response to the IFB. We held that although the contracting officer invited Harwell

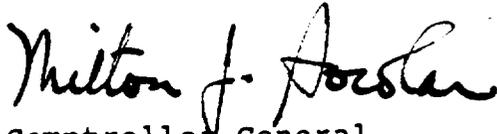
to participate in the RFP in an attempt to increase competition, the agency erred in selectively soliciting Harwell to compete in the negotiated procurement to the exclusion of other potentially interested firms. However, we sustained Harwell's protest against the proposed award to Jud and recommended that the agency resolicit based on full and open competition.

A protester may be awarded the reasonable costs of filing and pursuing its protest, including attorneys' fees, where our Office determines that a solicitation, proposed award, or award does not comply with a statute or regulation. 31 U.S.C. § 3554(c) (Supp. III 1985). Under the regulations applicable to this protest (4 C.F.R. § 21.6(d) (1987)), we consistently have held that a protester is entitled to recover such costs where the agency has unreasonably excluded the protester from the procurement, unless we recommend that the contract be awarded to the protester and the protester receives the award. W.D.C. Realty Corp., B-225468, Mar. 4, 1987, 66 Comp. Gen. ____, 87-1 CPD ¶ 248. We have interpreted this, for example, to allow recovery of the costs of protesting an improper sole-source award, even when we also recommend that a new procurement be conducted under which the protester will have the opportunity to compete. See Washington National Arena Limited Partnership, 65 Comp. Gen. 25 (1985), 85-2 CPD ¶ 435. We think this principle equally applies here. Harwell successfully challenged a proposed award and, although it was seeking award for itself, as a result of our recommendation competition for the procurement will be significantly enhanced. In such a case, we consider the recovery of the costs of filing and pursuing the protest to be consistent with the broad purpose of the Competition in Contracting Act of 1984, 10 U.S.C. § 2301 (Supp. III 1985), which is to increase and enhance competition in federal procurements. See Southern Technologies, Inc., B-224328, Jan. 9, 1987, 87-1 CPD ¶ 42; AT&T Information Systems, Inc., B-223914, Oct. 23, 1986, 66 Comp. Gen. ____, 86-2 CPD ¶ 447.

However, based upon our recommendation for resolicitation of the procurement in accordance with 4 C.F.R. § 21.6(a)(4), we cannot grant Harwell's request for recovery of its proposal preparation costs, including the costs apparently incurred in connection with interest accrued upon a certified check posted as a bid bond, since recovery of proposal preparation costs is limited to where the protester has been unreasonably excluded from the competition and none of the other remedies in our regulations, at 4 C.F.R. § 21.6(a)(2)-(5), is appropriate. See W.D.C. Realty Corp., B-225468, supra. Here, Harwell was not excluded unreasonably from the competition. As indicated in our decision, the contracting officer could not properly solicit Harwell alone, but was

required to resolicit the requirement based on full and open competition with all potential offerors.

Accordingly, the National Guard Bureau should reimburse Harwell's costs of filing and pursuing the protest, including reasonable attorney's fees. Harwell should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(e).

for 
Comptroller General
of the United States