



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Building Services Unlimited, Inc.--Claim for Costs

File: B-243735.3

Date: August 27, 1991

Dennis J. Riley, Esq., and Jared H. Silberman, Esq., Elliott, Bray & Riley, for the protester.

David W. LaCroix, Esq., Department of the Navy, for the agency.

Taria L. Calhoun and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to award of the costs of filing and pursuing its protest under section 21.6(e) of the General Accounting Office (GAO) Bid Protest Regulations where GAO dismisses a protest because the agency canceled the protested solicitation and the record indicates this cancellation was not corrective action in response to the protest.

DECISION

Building Services Unlimited, Inc. (BSUI) requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest. On May 8, 1991, BSUI protested 89 alleged solicitation defects in invitation for bids (IFB) No. N62467-91-B-3410, issued by the Department of the Navy, Naval Coastal Systems Center, for custodial services. On June 13, the agency canceled the IFB as a result of an asserted change in requirements. We therefore dismissed the protest as academic pursuant to section 21.3(m) of our Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)).

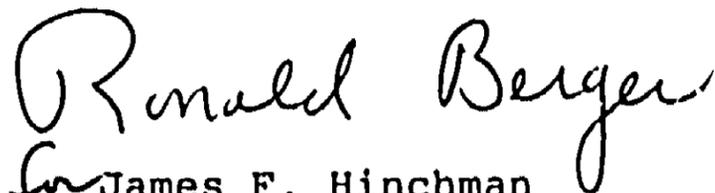
On July 1, the protester filed this claim with our Office under section 21.6(e) of our Bid Protest Regulations, 56 Fed. Reg. 3,759 supra (to be codified at 4 C.F.R. § 21.6(e)), for the costs of filing and pursuing the protest. Under that section, if the contracting agency takes corrective action in response to a protest, we may declare the protester to be entitled to recover the reasonable costs of filing and pursuing the protest, including attorneys' fees. In other

words, we may award costs in circumstances where the record shows that the agency had acted in violation of statute or regulation and only took corrective action in response to the protest.^{1/} See 56 Fed. Reg. 3,759 at 3,762 (preamble to Bid Protest Regulations).

In this case, there is no evidence, other than BSUI's allegations, that the IFB was defective. The agency did not amend the IFB to correct the deficiencies alleged by BSUI, and there is no persuasive evidence in the record that supports BSUI's allegation that the agency's cancellation of the solicitation was corrective action taken in response to the protest. In this regard, the agency asserts it canceled the solicitation as a result of a change in how it would satisfy its requirements. The Navy explains that individual contracts for various services were due to expire and that it indicated it would be in the best interest of the government, in terms of administrative efficiency, to combine the various services into one consolidated services contract. While BSUI speculates that many of the issues raised in its protest will be addressed in the new solicitation, we are unable to confirm this allegation since the solicitation has not yet been issued.

Finally, BSUI alleged that this cancellation is part of a pattern of misconduct by the agency to ensure that BSUI receives no contract awards. However, BSUI has not protested the cancellation and this does not constitute a basis for the award of costs under section 21.6(e) of our Bid Protest Regulations, which only provides for the award of costs in appropriate circumstances where the agency takes corrective action in response to a protest.

The claim for costs is denied.


for James F. Hinchman
General Counsel

^{1/} Even if an agency takes corrective action responsive to a protest, our Office will not award costs under this section if the corrective action was promptly taken. See Oklahoma Indian Corp.--Claim for Costs, B-243785.2, June 10, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 558.