Schatz 146877

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Columbia Research Laboratories, Inc.--Request for Declaration of Entitlement to Costs

File: B-246166.2

Date: June 10, 1992

Alan M. Lestz, Esq., Witte, Lestz & Hogan, P.C., for the protester.
Albert Ellison for Western Sensors, Ltd., an interested party.
Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.
Sylvia Schatz, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to costs of filing and pursuing its protest, dismissed by the General Accounting Office as academic on the basis that the agency terminated awardee's contract, where protest against award was not clearly meritorious.

DECISION

Columbia Research Laboratories, Inc. (CRL) requests that our Office declare the firm entitled to recover the reasonable costs of filing and pursuing its protest under request for proposals (RFP) No. DLA400-91-R-0494, issued by the Defense Logistics Agency (DLA) for aircraft strain sensors (which are used to determine the useful life of an aircraft).

We deny the request.

In its protest, filed on October 9, 1991, and subsequent submissions, CRL primarily argued that the award to Western Sensors was improper because DLA had improperly failed to apply a Buy American Act evaluation factor to Western Sensors' proposal price and had made award with the intent to waive or alter the solicitation's requirement that the strain sensors be qualified after award and prior to delivery. The protester explained that since it took at least a year to complete qualification of the sensors, and Western Sensors' item had not yet been qualified, there would be

insufficient time prior to the required delivery date to qualify Western Sensors' proposed sensors.

On January 27, the agency informed our Office that it was terminating the awardee's contract and resoliciting the procurement. According to the agency, the RFP's provisions regarding the qualification of strain sensors were ambiguous and failed to adequately provide for an enforceable requirement for qualification prior to production, which the agency viewed as necessary because of the critical nature of the item. Specifically, the intended qualification requirements were an attachment to the original equipment manufacturer's part drawing, which was referenced in the solicitation's item description; the agency concluded that it was unclear from the solicitation (and therefore in the resulting contract) whether the qualification requirements applied to this procurement and had to be satisfied prior to production. Since termination of the awardee's contract rendered the protest academic, we dismissed the protest.

CRL claims that it is entitled to recover its protest costs under subsection 21.6(e) of our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1992). Pursuant to the Regulations, we may find a protester to be entitled to costs where we determine that an agency's solicitation, proposed award, or award does not comply with a statute or regulation and the agency unduly delays taking corrective action in response to the meritorious protest. See Commercial Energies, Inc.--Recon. and Declaration of Entitlement to Costs, 71 Comp. Gen. 97 (1991), 91-2 CPD ¶ 499; cf., Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558; American Imaging Servs., Inc.--Request for Declaration of Entitlement to Costs, B-246124.3, Feb. 28, 1992, 92-1 CPD ¶ 239; Building Servs. Unlimited, Inc.--Claim for Costs, B-243735.3, Aug. 27, 1991, 91-2 CPD ¶ 200.

We find that CRL is not entitled to its protest costs since the record does not establish that DLA unduly delayed taking corrective action in response to a clearly meritorious protest. First, there is no evidence that DLA intended to waive the requirement for qualification of the strain sensors prior to production. On the contrary, the record indicates that DLA viewed qualification prior to production as necessary and terminated the contract precisely because of its determination that the specifications were sufficiently ambiguous that the agency would be unable to enforce the intended requirement. As for the agency's delay in finding the qualification requirement ambiguous or unenforceable, in our view, any such deficiency in the solicitation was not so apparent on the face of the solicitation that the delay in reaching this conclusion was unwarranted. Nor does it appear from the record that DLA improperly failed to apply a Buy American Act evaluation

factor to Western's proposal price. See Alan Scott Indus.; Grieshaber Mfg. Co., Inc., B-212703.2, Sept. 25, 1984, 84-2 CPD ¶ 349, aff'd, Grieshaber Mfg. Co., Inc.--Recon., B-212703.3, Nov. 5, 1984, 84-2 CPD ¶ 495. In any event, the record shows that the protester submitted an unacceptable proposal, since it failed to include any of the required certifications, including a signed Certificate of Procurement Integrity. Thus, CRL was not an interested party eligible to challenge the award under our Bid Protest Regulations. 4 C.F.R. §§ 21.0(a) and 21.1(a); Sunbelt Indus., Inc., B-245244, Nov. 1, 1991, 91-2 CPD ¶ 421.

Accordingly, the request for a declaration of entitlement to costs is denied.

for James F. Hinchman
General Counsel