



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Crown Engineering--Entitlement to Costs

File: B-251584.2

Date: May 24, 1993

Donald J. Kinlin, Esq., Thompson, Hine and Flory, for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to the costs of filing and pursuing its protest to the General Accounting Office (GAO), even though protest previously was filed with agency on the same matter, where agency took corrective action approximately 1 month after protest was filed with GAO.

DECISION

Crown Engineering requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest with respect to the award made to Lombardi Water Management, Inc. under request for proposals No. F33601-92-R-9222, issued by the Department of the Air Force for industrial water treatment consulting services.

We deny the request.

On October 27, 1992, prior to the award to Lombardi, Crown filed an agency-level protest in which it argued that Lombardi lacked the required experience and otherwise did not meet the qualification requirements set forth in the solicitation; according to Crown, Lombardi's proposal therefore was unacceptable. The Air Force denied this protest on December 1, finding Lombardi "capable of fulfilling the requirements of the Solicitation," and then made award to Lombardi. On December 9, Crown protested to our Office, arguing that Lombardi did not meet definitive responsibility criteria in the solicitation. Twenty-two working days later, on January 12, the Air Force advised our Office it had determined that the definitive responsibility

criteria were unduly restrictive of competition and exceeded the government's minimum needs; the agency indicated that it intended to terminate Lombardi's contract for the convenience of the government, revise the statement of work to reduce the number of definitive responsibility criteria, and then resolicit.

According to Crown, its protest was clearly meritorious, since it was common knowledge that Lombardi did not meet the definitive responsibility criteria in the solicitation. Crown argues that, therefore, the Air Force's failure to take corrective action until 11 weeks after the agency-level protest was filed (and 4 weeks after its protest to our Office), entitles it to recover its protest costs. We disagree.

Under the Competition in Contracting Act of 1984 (CICA), our Office may find an entitlement to costs only where we find that an agency's action violated a procurement statute or regulation. 31 U.S.C. § 3554(c)(1) (1988). Our Bid Protest Regulations provide that a protester may be entitled to reimbursement of its costs of filing and pursuing a protest where the contracting agency decides to take corrective action in response to a protest. 4 C.F.R. § 21.6(e) (1993). This does not mean, however, that costs are due in every case in which an agency takes corrective action; rather, we will find an entitlement to costs only where an agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Oklahoma Indian Corp.--Claim for Costs, 70 Comp. Gen. 558 (1991), 91-1 CPD ¶ 558.

In this case, the Air Force decided to terminate Lombardi's contract and revise the solicitation to reflect its actual minimum needs approximately 1 month after Crown filed its protest with our Office. We have considered this to be sufficiently prompt corrective action to warrant denial of the protester's claim for costs, see Dynair Elecs., Inc.--Claim for Costs, B-244290.2, Sept. 18, 1991, 91-2 CPD ¶ 260 (corrective action within 4 weeks).

Further, we have rejected the view that, as Crown argues, the date of an agency-level protest should serve as the measure for determining the promptness of the agency's corrective action. R.J. Sanders, Inc.--Claim for Costs, B-245388.2, Apr. 14, 1992, 92-1 CPD ¶ 362. CICA limits our protest jurisdiction to written objections to a solicitation, proposed award, or award of a contract filed with our Office. 31 U.S.C. §§ 3551(1) and 3552. Our authority to declare an entitlement to protest costs extends to parties whose protests to our Office support a finding that a procurement statute or regulation was violated. 31 U.S.C. § 3554(c)(1). The provision in our Regulations permitting an award of costs where an agency takes

corrective action was not intended to ensure the fairness of agency-level protest processes; that is the responsibility of the procuring agencies involved. The purpose of our provision is to ensure the fair treatment of those protesters to our Office who make substantial investments of time and resources in pursuit of clearly meritorious protests, but who do not have the opportunity to recoup their costs because of agency corrective actions. R.J. Sanders, Inc.--Claim for Costs, supra; Propulsion Controls Eng'g--Request for Declaration of Entitlement to Costs, B-244619.2, Mar. 25, 1992, 92-1 CPD ¶ 306.

Since the Air Force did not unduly delay taking corrective action, Crown's request for a declaration of entitlement to costs is denied.



for James F. Hinchman
General Counsel