



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

435254

Decision

Matter of: Engineering Incorporated--Entitlement to Costs

File: B-257822.3

Date: May 9, 1995

DECISION

Engineering Incorporated requests that we declare it entitled to its costs of filing and pursuing its protests, B-257822 and B-257822.2, against the award of a contract by the Army Corps of Engineers to Dynatest Consulting, Inc., under request for proposals (RFP) No. DACA39-94-R-0025 for a pavement testing machine. Upon receiving notice of the award to Dynatest, Engineering Incorporated protested to our Office that the Corps failed to adequately evaluate Engineering Incorporated's proposal; improperly evaluated Dynatest's proposal; evaluated the offerors unequally; and made an improper cost realism determination. After reviewing the agency's report on the protest, Engineering Incorporated raised additional grounds, including the Corps's alleged failure to conduct meaningful discussions and that the Corps misapplied the Buy American Act penalty to Dynatest's offer.

While considering Engineering Incorporated's supplemental protest grounds, the Corps determined that it had indeed misapplied the Buy American Act penalty in evaluating Dynatest's offer, and that with the penalty correctly applied, Dynatest's evaluated price exceeded Engineering Incorporated's price. The Corps then notified our Office that it would terminate the contract with Dynatest for the convenience of the government. However, the Corps could not award the contract to Engineering Incorporated because that firm's price exceeded the funds available for the project. Consequently, the contracting officer canceled the RFP with the intention of resoliciting the agency's needs at a later date. Based on the Corps's proposed corrective action, our Office dismissed Engineering Incorporated's protest as academic on October 11, 1994. Engineering Incorporated then filed this request for a declaration of entitlement to costs based on the agency's corrective action.

Upon notification of the termination of its contract, Dynatest protested the agency's corrective action. We sustained Dynatest's protest of the termination of its contract on the ground that the Corps had actually misapplied the Buy American Act penalty to Dynatest's offer in taking corrective action in response to Engineering Incorporated's protest, Dynatest Consulting, Inc., B-257822.4, Mar. 1, 1995, 95-1 CPD ¶ _____. We have been advised that in response to this decision, the Corps has reinstated award to Dynatest. Engineering Incorporated has now renewed its other protest grounds of the award to Dynatest, which will be the subject of a future decision.

Under our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1995), we may declare a protester entitled to costs, including reasonable attorneys' fees, where, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Alpha O, Inc.--Entitlement to Costs, B-248706.4, July 27, 1993, 93-2 CPD ¶ 70. Here, the basis on which Engineering Incorporated claimed entitlement to costs no longer exists as the agency proposes to reinstate the Dynatest award.

Accordingly, Engineering Incorporated's request for a declaration of entitlement to costs is denied.

Michael J. Salter
for Robert P. Murphy
General Counsel