



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Continental Technical Services of Georgia, Inc.--  
Entitlement to Costs

**File:** B-259681.3

**Date:** October 12, 1995

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### DECISION

Continental Technical Services of Georgia, Inc. (CTS) requests that our Office declare it entitled, pursuant to 4 C.F.R. § 21.6(e) (1995), to recover the reasonable costs of filing and pursuing one of its two protests under request for proposals (RFP) No. DKX30-90, issued by Martin Marietta Energy Services (MMES).

We deny the request for entitlement.

CTS' protests concerned two solicitations that MMES issued in its capacity as a prime management and operating contractor to the Department of Energy (DOE) at the agency's Oak Ridge, Tennessee facility. The two solicitations used the same RFP number because they provided for award for essentially the same technical support services. MMES set one solicitation aside for award to small disadvantaged businesses (SDB), and allowed unrestricted competition for the other award.

The two RFPs differed only in that one RFP contained a notice that MMES would not accept offers for the set-aside portion of the effort from firms that were not SDBs. The statements of work, proposal preparation instructions, and evaluation factors were identical for the two solicitations, and MMES expected SDBs to submit identical proposals in response to both. The use of two essentially identical solicitations with the same RFP number became a source of confusion during the protest process.

First, MMES established a competitive range under the set-aside portion of the solicitation. In notifying CTS of its proposal's elimination from this competitive range, MMES initially failed to advise CTS to which solicitation the notice applied. As a consequence, one of the two protests that CTS filed with the agency and, later, with our Office, was premature because MMES had made no competitive range determination with regard to the unrestricted portion of the solicitation.

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On December 14, 1994, CTS filed two almost identical protests with our Office--differing only in a caption on the first page and an attachment--without providing a copy to the agency. It took 7 weeks for our Office to learn that the agency did not have a copy of the protest under the unrestricted RFP.<sup>1</sup> It was at approximately the same time that MMES actually made a determination to eliminate CTS' proposal from the competitive range under the unrestricted RFP.

The agency's late receipt of one protest did not affect the filing of the agency report, since our Office and the agency presumed that the record in both protests would be substantially similar. However, CTS' March 8, 1995 comments on the agency report noted that the agency had not furnished our Office with an additional resume included with CTS' proposal for the unrestricted solicitation. In reviewing CTS' comments, MMES discovered that instead of submitting identical proposals for both portions of the solicitation, as presumed, CTS had furnished an additional resume with its offer in response to the unrestricted RFP.

After consultation with the evaluators, the agency and MMES determined that the review of proposals submitted for the unrestricted solicitation was inadequate and that the evaluators' errors invalidated the competitive range determination. Since MMES had already debriefed some of the offerors whose proposals it had eliminated from the competitive range, the contracting officer determined that it would be unfair to the competitive range offerors to continue the procurement. MMES therefore canceled the solicitation. Our Office subsequently granted the agency's request to dismiss as academic CTS' protest against its proposal's elimination from the competitive range under the unrestricted RFP.

In cases where the protester requests recovery of protest costs after the agency takes corrective action, we will find an entitlement to costs only where the 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 determining whether an agency has unduly delayed taking corrective action, determination of the appropriate date from which the corrective action is measured is critical. GS Elektro-Schewe GmbH, B-259103.2, Apr. 13, 1995, 95-1 CPD ¶ 196. Here, measured from the time when CTS first raised the issues that led to the agency's decision to take corrective action, that decision was not unduly delayed and the award of protest costs is not appropriate.

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<sup>1</sup>Because they appeared virtually identical, we treated the two protests as one until CTS advised our Office that it had filed two protests. In opening the second protest file, our Office erroneously provided the agency with a second copy of the first protest.

The relevant date for determining whether the delay in taking corrective action was undue is generally the date on which the protester made the relevant allegation. Wall Colmonoy Corp.—Entitlement to Costs, B-257183.3, Nov. 16, 1994, 94-2 CPD ¶ 189. Here, the unfocused nature of the protester's filings provides no basis for determining that the protest was clearly meritorious when first filed. See Atlas Powder Int'l, Ltd.—Recon., B-254408.6, Sept. 6, 1994, 94-2 CPD ¶ 126. Rather, it was CTS' assertion—in its March 8 comments—that it had submitted an additional resume with its offer under the unrestricted RFP which alerted the agency to the need for corrective action.<sup>2</sup> In addition, CTS' failure to follow our Bid Protest Regulations, 4 C.F.R. § 21.1(d), by not providing a copy of its protest to the agency, contributed significantly to the agency's delay in taking corrective action.

Under these circumstances, we do not think that the delay between CTS' filing comments on March 8 and the agency's decision of April 12 to take corrective action was undue. Accordingly, there is no basis to find CTS entitled to recover its protest costs.<sup>3</sup>

The request for a declaration of entitlement to costs is denied.

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<sup>2</sup>In our prior decision, Continental Technical Servs. of Georgia, Inc., B-259681; B-259681.2, Apr. 19, 1995, 95-1 CPD ¶ 204, we found the evaluation of CTS' proposal reasonable and dismissed most of the remaining issues raised by CTS as untimely or otherwise not a proper subject of protest. There was nothing in the record to indicate that the submission of different resumes would have resolved the issues of concern to the evaluators, which included CTS' failure to address such issues as start-up problems, cost minimization efforts, and the handling of personnel problems.

<sup>3</sup>CTS also requests reimbursement of its proposal preparation costs. Our Regulations do not contemplate the recovery of such costs under any circumstances when an agency takes corrective action. See Loral Fairchild Corp.—Entitlement to Costs, B-251209.2, May 12, 1993, 93-1 CPD ¶ 378.