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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

31602

FILE: B-218292.2

DATE: July 2, 1985

MATTER OF: Computer Resource Technology Corporation

DIGEST:

1. Claim for bid preparation costs based on allegation that agency was aware prior to issuing the solicitation that required services could be performed only by one firm and that agency put claimant to needless expense in preparing its proposal is denied where claimant has not shown that the agency acted in bad faith in issuing the solicitation.
2. Recovery of the costs of filing and pursuing a protest may be allowed where the agency has unreasonably excluded a protester from the procurement. Where, however, an agency's determination to cancel a solicitation is not found unreasonable, the protester has not been improperly excluded from the competition and no basis exists for the recovery of such costs.

Computer Resource Technology Corporation (CRTC) requests reimbursement of its proposal preparation expenses under request for quotations (RFQ) No. N60530-85-Q-N311 issued by the Department of the Navy for the development of a contract tracking system. The RFQ was canceled and a sole-source award for the requirement was subsequently made to Digital Sciences Corporation (DSC). CRTC protested and in Computer Resource Technology Corp., B-218292, May 16, 1985, 85-1 CPD ¶ _____, we rejected CRTC's assertion that the Navy's actions in canceling the RFQ and awarding the contract to DSC were unreasonable. CRTC contends that the Navy was aware, prior to issuing the RFQ, that a sole-source award would be made and that CRTC should be reimbursed the needless cost expended in preparing its quotation. In addition, CRTC requests that it be allowed to recover the cost of filing and pursuing its protest.

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We deny the claim.

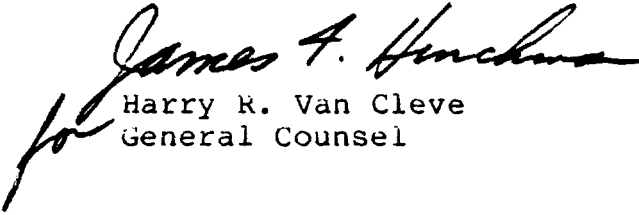
The Navy's justification for the sole-source award to DSC was based on a determination that CRTC's former project manager (currently president of DSC) was essential to the timely performance of the work. The Navy states that a sole-source award to CRTC was initially recommended because of the unique experience of its project manager in revising and rewriting the contract tracking system program. However, the sole-source justification was questioned and it was decided to issue a competitive solicitation. Subsequently, CRTC's project manager became president of DSC and quotations were received from both firms. The Navy determined that CRTC could not do the work within the required timeframe without its former project manager and realized that the issuance of the RFQ was a mistake. Accordingly, the Navy canceled the solicitation and awarded the contract to DSC.

CRTC argues that the Navy should never have issued the RFQ if the Navy considered CRTC's project manager so essential to the performance of the work. CRTC contends that the Navy knew prior to issuing the RFQ that its project manager had left the firm and that sufficient time existed to cancel the RFQ prior to the receipt of quotations and the incurrence of additional expense by CRTC. CRTC argues that the Navy created the false impression of competition and induced CRTC to incur the expense of preparing a quotation. CRTC contends that even if the Navy had made a legitimate mistake in issuing the solicitation, the Navy, not CRTC, should be held responsible for the consequences.

A prerequisite to the entitlement of proposal preparation expenses based on an allegation that the agency solicited proposals with knowledge that the proposals could not be considered is a showing that the government acted in bad faith in issuing the solicitation. Chrysler Corp., B-206943, Sept. 24, 1982, 82-2 CPD ¶ 271. Here, we concluded that the Navy's determination to cancel the RFQ and award the contract to DSC was not unreasonable. Although the Navy's decision to cancel appears to be based on facts which were available prior to the issuance of the RFQ, we find no evidence that the Navy issued the solicitation in bad faith. Further, a lack of due diligence or carelessness on the Navy's part in allowing the solicitation to be issued or in not canceling the RFQ at an earlier date, in

our view, does not entitle CRTC to bid preparation costs since mere negligence or lack of due diligence, standing alone, does not rise to the level of arbitrary or capricious action which provides a basis for the recovery of bid preparation expenses. Chrysler Corp., B-206943, supra.

Regarding the recovery of the costs of filing and pursuing CRTC's earlier protest with our Office, our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1985), limit the recovery of costs to situations where the protester is unreasonably excluded from the procurement, except where this Office recommends that the contract be awarded to the protester and the protester receives the award. The Regulations provide that the cost of filing and pursuing a protest should be allowed only where the protester was improperly denied the opportunity to compete for the award. Federal Properties of R.I., Inc., B-218192.2, May 7, 1985, 85-1 CPD ¶ _____. Where, as here, an agency's determination to cancel a solicitation is not found unreasonable, the protester has not been improperly excluded from the competition and we find no basis to allow the recovery of such costs. We therefore also deny the protester's request for reimbursement of such costs.


for Harry R. Van Cleve
General Counsel