

Carter



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pacific Northwest Bell Telephone Company, Mountain
States Bell Telephone Company--Claim for Bid
Protest Costs
File: B-227850.3
Date: June 6, 1988

DIGEST

Where the result of the General Accounting Office sustaining a protest of an unduly restrictive requirement is that competition for the contract will be increased and enhanced, protesters are entitled to recover costs of filing and pursuing the protest and of responding to the contracting agency's unsuccessful request for reconsideration.

DECISION

The Pacific Northwest Bell Telephone Company and Mountain States Bell Telephone Company request reimbursement of the costs incurred in filing and pursuing a bid protest that we sustained, and in defending a request for reconsideration, in connection with request for proposals (RFP) No. KET-LH-87-0008 issued by the General Services Administration (GSA). We hold that the protesters are entitled to reimbursement for the claimed costs.

The protest raised two central issues. We sustained the protest in part on the basis that a requirement, challenged by the protesters, for a single contract to cover all of the states within GSA's Pacific Zone unreasonably restricted competition and unfairly discriminated against the protesters. We recommended that the procurement therefore be canceled and the RFP restructured and reissued. We further recommended that GSA reassess its approach to the cost evaluation, also challenged by the protesters, although we did not find that GSA's chosen approach was unreasonable or that it unduly restricted the competition. See Pacific Northwest Bell Telephone Co., et al., B-227850, Oct. 21, 1987, 87-2 CPD ¶ 379. We affirmed the decision in response to a request by GSA for reconsideration. See Pacific Northwest Bell Telephone Co., et al.--Reconsideration, B-227850.2, Mar. 22, 1988, 88-1 CPD ¶ 294.

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At the time of our decision on this protest, our Bid Protest Regulations (4 C.F.R. § 21.6 (1987)) stated:

"(d) If the General Accounting Office determines that a solicitation, proposed award, or award does not comply with statute or regulation it may declare the protester to be entitled to reasonable costs of:

"(1) Filing and pursuing the protest, including attorney's fees . . .

"(e) The General Accounting Office will allow the recovery of costs under paragraph (d)(1) of this section where the contracting agency has unreasonably excluded the protester from the procurement except where the General Accounting Office recommends . . . that the contract be awarded to the protester and the protester receives the award. . . ."

In contesting GSA's single-contract requirement, the protesters successfully challenged an unduly restrictive specification and, as a result of our recommendation, the competition will be enhanced. In these circumstances, we consider it consistent with the broad purpose of the Competition in Contracting Act of 1984, 41 U.S.C. § 253 (Supp. III 1985), to increase and enhance competition, to allow recovery of the costs of filing and pursuing the protest. Southern Technologies, Inc., B-224328, Jan. 9, 1987, 87-1 CPD ¶ 42.

Further, we think CICA contemplates that where, as here, an agency liable for protest costs asks us to reconsider the finding on which that liability is based--that a specification was too restrictive--the costs attendant to the protester's response also are reimbursable. By requesting reconsideration, the agency presumably recognizes that it may well be compelling the winning protester to respond again to the agency's actions and views. A protester's participation, to defend further a challenge that led to the full and open competition that CICA mandates, thus continues to serve the statute's stated purpose, so that reconsideration costs thereby incurred should be considered an element of the CICA protest process.

The protester's claim for costs, including those incurred during our reconsideration, at GSA's request, of our original decision, therefore is allowed. The protesters

should file their claim directly with GSA. If the parties are unable to agree on the amount within a reasonable time, this Office will determine the amount to be paid. 4 C.F.R. § 21.6(f).

for 
Comptroller General
of the United States