



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Telesynetics Corporation

File: B-228916.4, B-228916.5

Date: August 2, 1988

DIGEST

Protester may recover the costs it incurred in filing and pursuing its initial protest and its proposal preparation costs where agency's improper evaluation of protester's best and final offer tainted the procurement, as a result of which the protester was unreasonably denied the opportunity to receive the award, and no other remedy is now available since the procurement has been canceled.

DECISION

Telesynetics Corporation protests the cancellation of request for proposals (RFP) No. DACW38-87-R-0042, issued by the Department of the Army for the development of an integrated master plan to meet the communication needs of the Army Corps of Engineers in the Lower Mississippi Valley Division (LMVD). Telesynetics seeks award under the RFP or, in the alternative, costs for filing and pursuing its protests and for proposal preparation.

We find the protester is entitled to the costs of filing and pursuing its initial protest and of preparing its proposal.

This procurement was the subject of an earlier decision of our Office, Programmatic, Inc.; Telesynetics Corporation, B-228916.2; B-228916.3, Jan. 14, 1988, 88-1 CPD ¶ 35, in which we upheld the protests of Telesynetics and one other offeror against the award of the resulting contract to Touche Ross & Company. The protests were sustained based upon our finding that the award decision was not supported by or rationally related to the evaluation factors stated in the RFP, but was based upon an inadequately documented evaluation team report and recommendation. In view of our finding, we recommended that the Army reevaluate best and final offers (BAFOs) in a manner consistent with the stated evaluation criteria, properly documenting the scores awarded, and if such reevaluations should support an award to other than Touche Ross, the Army should terminate the contract with that firm and award it in accordance with the terms of the RFP.

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Pursuant to our recommendation, a newly established evaluation team was convened and began the reevaluation of the BAFOs of those offerors previously determined to be within the competitive range, which included Telesynetics. The Army states, however, that before the reevaluation process was "completed in its entirety," or written findings thereof were prepared, the contracting office decided to terminate the contract with Touche Ross for the convenience of the government and cancel the solicitation.

The contracting officer determined that cancellation of the solicitation was in the best interest of the government, essentially because the needs of the contracting district had changed since the solicitation was issued. More, specifically, the agency explains that the development of the communications master plan called for under the subject solicitation would now be inconsistent with the development under a separate, subsequently issued task order issued under another contract by Headquarters, United States Army Corps of Engineers, for the establishment of generic guidelines for communications master plans to be used by all Corps field activities, including LMVD. The agency further states that the needs of LMVD have changed because certain services and options which were available for a communications system when the solicitation was issued are no longer available. In addition, the agency states that the Corps' communications needs will be directly impacted by its request of a waiver from inclusion in the Defense Data Network.

Telesynetics challenges the adequacy of Army's justifications of its decision to cancel the solicitation, questioning whether a district such as LMVD which already has begun to develop its own communication master plan need await the Corps-wide guidelines to be issued pursuant to the Headquarters contract and stating that the changed conditions on which the Army relies were or should have been known to the Army at the time the RFP was issued. The Army states that cancellation of the procurement was not improper because the specifications need substantial revision to be consistent with the standards to be promulgated by Headquarters and in light of current circumstances. Citing our decisions in Billings American Indian Council, B-228989; B-228989.2, Dec. 29, 1987, 87-2 CPD ¶ 639, and Crow-Gottesman-Hill #8--Reconsideration, B-227809.2, Nov. 10, 1987, 87-2 CPD ¶ 471, the Army takes the position that it is irrelevant that the decision to cancel was made during the course of corrective action recommended by our Office since information relating to whether there is sufficient reason to cancel can be considered regardless of when that information surfaces. Despite the protester's reservations, the record before us does not provide a basis for concluding that the agency's

cancellation of this procurement was arbitrary or unreasonable. We do note, however, that in similar situations where the protester was unreasonably denied the opportunity to receive an award, but because of intervening circumstances of the procurement, any further opportunity to compete was foreclosed to the protester, and no other corrective action was appropriate under our Bid Protest Regulations (4 C.F.R. § 21.6(d) (1988)), we have allowed the protester to recover reasonable costs associated with competing for, and subsequently protesting, the award of the contract.

For example, in Consolidated Bell, Inc., B-220425.2, Aug. 18, 1986, 86-1 CPD ¶ 192, following our decision sustaining a protest of the agency's improper award of a contract, the solicitation was canceled, thus precluding the protester an opportunity to compete. In that instance, as here, where the procurement had been tainted by the contracting agency's improper action, as a result of which the protester was unreasonably denied the opportunity to receive a contract award, we found that the protester was entitled to recover the costs of filing and pursuing the protest and the cost of preparing its proposal.

Since, under the circumstances of this case, award to Telesynetics, which had a substantial chance of receiving the award is not now possible, we find that as in Consolidated Bell, Inc., B-220425.2, supra, the protester is entitled to the reasonable costs of filing and pursuing its initial protest (B-228916.3). See also, United Digital Networks, Inc., B-222422.3, Apr. 6, 1987, 87-1 CPD ¶ 380; Computer Data Systems, Inc., B-218266, May 31, 1985, 85-1 CPD ¶ 624. Further, since no other corrective action under our Bid Protest Regulations is appropriate, the protester is also entitled to recover its proposal preparation costs. United Digital Networks, Inc., B-222422.3, supra; Computer Data Systems, Inc., B-218266, supra.

Telesynetics should submit its claim for costs directly to the Army. 4 C.F.R. § 21.6(e).

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for Comptroller General
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