

Ayer



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

Decision

Matter of: Global Imaging, Inc.--Reconsideration, Claim for Protest Costs
File: B-241035.2
Date: December 5, 1990

Stanley A. Becker, Esq., and Gregory P. Goonan, Esq., Spensley, Horn, Jubas & Lubitz, for the protester. Jonathan Kosarin, Esq., and Robert E. Young, Esq., Department of the Navy, for the agency. Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office affirms prior dismissal based on the determination that protest became academic when agency terminated the protested contract award for the convenience of the government and stated agency intention to solicit best and final offers from the offerors after revising solicitation to reflect agency's minimum needs.
2. Protester is not entitled to proposal preparation costs and costs of filing and pursuing protest, including attorneys' fees, where General Accounting Office did not issue a decision on the merits of the protest after agency's corrective action rendered the protest academic.

DECISION

Global Imaging, Inc. requests reconsideration of the dismissal of its protest against the Department of the Navy's award of a contract to SeaSpace under request for proposals (RFP) No. N62306-90-R-0023 for digital imaging processing software (Lot 1) and support services (Lot 2). Global contends that the Navy's corrective action in response to the protest was not what Global wanted and that our Office should now decide the merits of the protest. Global also claims its proposal preparation costs and the costs of filing and pursuing the protest, including attorneys' fees.

We affirm the dismissal of Global's protest and deny its claim for costs.

OSD/ina/192777

The RFP solicited the Lot 1 software on a brand name or equal basis calling out Global Imaging model numbers with enumerated salient characteristics. The Navy awarded the Lot 1 to SeaSpace for \$10,750. (Global offered the specified software for \$45,276.) The Lot 2 support services were awarded to Global. Global protested the Lot 1 award, first to the Navy and then to our Office, urging that SeaSpace's software was not functionally equivalent to the brand name software. In submissions to our Office, Global sought either the award of Lot 1, or "[a]t a minimum" resolicitation of the requirement.

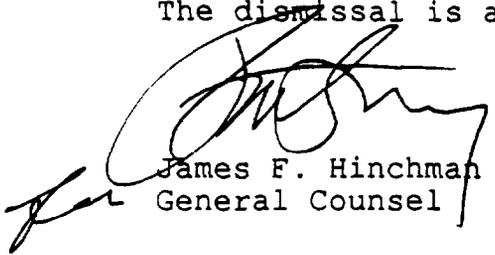
We dismissed the protest as academic after being apprised that the Navy had terminated the award to SeaSpace for the convenience of the government, was revising the RFP specifications to reflect its actual software requirements, and would request best and final offers based on the revised specifications.

Global states that the Navy deleted references to a substantial number of its software's functions while adding "specifications reflecting characteristics of the SeaSpace software." In Global's view the Navy's revisions rewrote the solicitation "in such a way that . . . [Global] is virtually assured of not receiving the contract award." Nevertheless, Global has informed the Navy that "[i]t is not protesting the revised RFP." (Emphasis in original.) Global acknowledges that the Navy "certainly has the right to purchase less sophisticated software than it already has if it believes this will meet its requirements."

We will not consider the merits of a protest against the award of a contract to another firm where the contract in question has subsequently been terminated for the convenience of the government because this action renders the protest academic. Freund Precision, Inc., B-226526, May 13, 1987, 87-1 CPD ¶ 504; Jarke Corp., B-224937, Nov. 5, 1986, 86-2 CPD ¶ 523. The Navy's termination of the SeaSpace contract has resolved any issue of the propriety of the SeaSpace award and our review of this matter would serve no useful purpose. This is so because the SeaSpace award is no longer a factor in deciding the proper awardee for the Lot 1 requirement under the revised RFP. In this regard, Global has not asserted that the revisions are in any way restrictive of its ability to compete for the Lot 1 requirement, and indeed expressly denies any intention to protest those specifications. Therefore, Global's protest was properly dismissed as academic.

We also find no basis for Global's claim for protest and proposal preparation costs, including attorneys' fees. Under our current rules, a protester is not entitled to reimbursement of its costs where the protest is dismissed as academic and we therefore do not issue a decision on the merits. See BTS Broadcast Television Sys., Inc.--Recon., B-239630.2, Sept. 19, 1990, 90-2 CPD ¶ 230; see also, Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213.

The dismissal is affirmed and the claim for costs denied.



James F. Hinchman
General Counsel