



Comptroller General
of the United States

Washington, D.C. 20548

Van Schaik

144819

Decision

Matter of: J&J Maintenance, Inc.--Claim for Costs

File: B-244384.2

Date: September 16, 1991

Donald E. Barnhill, Esq., East & Barnhill, for the protester, Penny Rabinkoff, Esq., Naval Facilities Engineering Command, for the agency.

John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to award of the costs of filing and pursuing its protest where agency promptly took corrective action after the protest was filed, responding to 37 specific questions raised by the protester in two amendments totaling 39 pages.

DECISION

J&J Maintenance, Inc. requests that our Office declare the protester entitled to recover reasonable costs of filing and pursuing its protest against the terms of request for proposals (RFP) No. N62477-91-R-0021, issued by the Department of the Navy for maintenance, repair, and other services at the Navy Family Housing Complex, Woodbridge, Virginia. In its protest, filed on June 7, 1991, J&J argued that the solicitation was ambiguous and did not contain sufficient information to enable offerors to compete on an equal basis. On June 10 and 11, after receiving notice of the protest, the agency issued solicitation amendment Nos. 3 and 4 that addressed all of the issues raised in the protest. As a consequence, on June 21, J&J withdrew its protest.

When J&J withdrew its protest, it filed a claim with our Office under section 21.6(e) of our Regulations for the costs of filing and pursuing the protest. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.6(e)). A protester is not

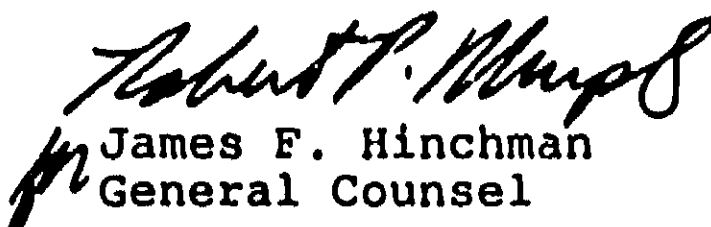
entitled to such costs where an agency takes prompt corrective action in response to the protest. Oklahoma Indian Corp.-- Claim for Costs, B-243785.2, June 10, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 558; General Physics Corp., B-244240.4, July 16, 1991, 91-2 CPD ¶ ____.

J&J states that it submitted two sets of questions on May 23 and 24 concerning substantially the same issues it raised in its protest to our Office and it did not get a response from the agency until it protested to our Office and amendments 3 and 4 were issued. J&J concludes that it is entitled to its protest costs because the protest showed that the RFP was not consistent with applicable statutes and regulations and because the agency's inaction forced the firm to file the protest.

The Navy explains that it thought that it answered most of J&J's numerous questions when it issued amendments 1 and 2 prior to the protest and it maintains that when the protest was filed it responded rapidly with amendments 3 and 4 on June 10 and 11, respectively.

We agree with the agency that it took prompt corrective action in response to the protest. General Physics Corp., B-244240.4, supra. Further, we do not think that the relatively short time--about 2 weeks--it was given to consider the large number of questions submitted^{1/} prior to the protest and in the protest constitutes a reason to disturb our view that the agency action was prompt under all the circumstances. Finally, the agency's prompt corrective action makes it irrelevant whether or not the RFP was legally defective prior to its amendment.

The request for award of costs is denied.


James F. Hinchman
General Counsel

^{1/} Amendment 3 was nine pages and responded to 31 specific questions, and amendment 4 was 30 pages, including answers to seven specific questions.