



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Locus Systems, Inc.--Request for Declaration
of Entitlement to Costs

File: B-241441.5

Date: February 12, 1992

Ross Dembling, Esq., Kurz Koch & Doland, for the protester.
Curtis Wilburn, Esq., Department of Agriculture, for the
agency.

Stephen J. Gary, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
this decision.

DIGEST

Protester is not entitled to costs of filing and pursuing protest where agency promptly investigated allegations that contract had been awarded improperly and, after determining protester was correct, terminated the contract for the purpose of resoliciting the requirement. Agency's actions, completed 1 day after the agency report on the protest was due and 1 month after protester had finalized its protest, were reasonably prompt given the relative complexity of issues involved.

DECISION

Locus Systems, Inc. (LSI) requests that our Office declare it entitled to recover the costs of filing and pursuing its protest in connection with request for proposals (RFP) No. 45-3K06-90, issued by the United States Department of Agriculture (USDA) to provide document indexing services for the National Agricultural Library (NAL).

We deny the request.

The solicitation was issued in August 1990 as a total small business set-aside. In February 1991, after holding discussions, USDA requested best and final offers (BAFO) from LSI, Information Ventures, Inc. (IVI), and two other firms. Based primarily on LSI's proposed price of \$175,158, compared to IVI's price of \$261,752, the agency selected LSI for award. By letter dated February 27, as is required in small business set-asides, USDA provided preaward notice of the prospective award to LSI. The letter, which was sent to all offerors except LSI, inadvertently disclosed LSI's proposed price.

Although unaware of the price disclosure, USDA determined that award could not be made to LSI for other reasons. The agency found that LSI's proposal reflected an ambiguity in the solicitation and could not be accepted as submitted. USDA then issued a clarifying amendment and called for a second round of BAFOs. In that round, based largely on IVI's significantly reduced price (\$201,128), the agency awarded the contract to IVI.

LSI protested the award to our Office, stating it had just learned that USDA's February letter had inadvertently disclosed LSI's price to the other offerors and asserting that this rendered the award invalid. The agency investigated and concluded that there had been an inadvertent disclosure of LSI's low price that had given IVI an improper competitive advantage. The agency decided to take corrective action and, on August 2, a day after the administrative report was due in our Office, USDA advised that it was terminating IVI's contract in order to re compete the requirement. We then dismissed LSI's protest as academic, and LSI filed this request.

Where an agency takes corrective action prior to our issuing a decision on the merits, we may declare a protester entitled to "recover reasonable costs of filing and pursuing the protest." 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(e)); Metters Indus., Inc.--Request for Declaration of Entitlement to Costs, B-240391.5, Dec. 12, 1991, 91-2 CPD ¶ 535. This provision is intended to allow the award of costs when agencies unduly delay taking corrective action in the face of a clearly meritorious protest. Id. A protester is not entitled to costs where, under the circumstances of a given case, an agency takes prompt corrective action. Id.

The history of this procurement is marked by numerous challenges. LSI's protest, which raised a number of issues, was the third filed with our Office. Subsequent to our dismissing it two more were filed. (These protests challenged USDA's termination of IVI's contract and were denied in Information Ventures, Inc., B-241441.4; B-241441.6, Dec. 27, 1991, 91-2 CPD ¶ 583.) Resolution of LSI's protest required consideration of a number of issues, some of which were relatively complex. The agency had to determine whether an improper disclosure had in fact occurred; whether IVI might have reduced its price as a result of the disclosure, with resulting prejudice to LSI; whether, regardless of the reason for IVI's price reduction, the disclosure was prejudicial on its face, either to LSI or to the integrity of the competitive procurement system; whether, if discussions were reopened, the result would be an impermissible auction, since IVI's price also had been disclosed; and what corrective action, if any, was

appropriate under the circumstances. The issue of corrective action, moreover, involved consideration of the possible costs and delays of termination and resolicitation, since a contract already had been awarded. LSI also further complicated the process by raising additional issues when it filed a supplement to its initial protest.

Given the history of the procurement and the time necessarily involved in investigating and considering the protester's allegations, we conclude that USDA did not unduly delay taking corrective action. See Metters Indus., Inc.--Request for Declaration of Entitlement to Costs, supra (length and complexity of procurement a factor in determining whether agency unduly delayed corrective action; agency's taking of corrective action 2 days after report was due did not entitle protester to costs). Accordingly, LSI's request for a declaration of entitlement to costs is denied. Id.


for James F. Hinchman
General Counsel

¹We discussed at length several of these issues in Information Ventures, Inc., supra.