

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-202766; B-203351 DATE: August 12, 1982

MATTER OF: McQuiston Associates - Claim for Proposal
Preparation Costs

DIGEST:

1. Claim for proposal preparation costs will not be considered since claim is based on agency action which claimant did not protest, and GAO will not permit circumvention of timeliness rules of Bid Protest Procedures by considering claim for proposal preparation costs from party who did not file timely protest.
2. Expenses incurred in pursuing bid protests are not compensable.

McQuiston Associates claims reimbursement for expenses incurred in preparing proposals and pursuing protests in connection with request for proposals (RFP) Nos. DAAH01-80-R-1299 and RFP DAAH01-81-R-0481 issued by the U.S. Army Missile Command, Redstone Arsenal, Alabama for 200 pulse forming networks. McQuiston alleges that the Army forced it to participate in both of these procurements by issuing the solicitations under the authority of the Defense Production Act, 50 U.S.C. § 2071 (1976), and then conducted both procurements in bad faith.

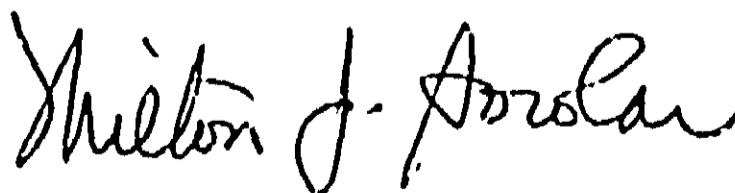
The Army issued RFP DAAH01-80-R-1299 on August 1, 1980, but canceled it on March 17, 1981 because McQuiston, the only firm to submit a proposal, refused to provide required cost or pricing data. On April 1, McQuiston protested the Army's cancellation of the solicitation to our Office. The Army then resolicited the identical requirement under RFP DAAH01-81-R-0481. McQuiston filed a second protest on May 18, alleging that there were a number of improprieties in the new solicitation. Before a decision was reached on either protest, the Army determined that it no longer required the items solicited and canceled the resolicitation on October 7.

The cancellation rendered the protests academic and we dismissed both protests without a decision on the merits. McQuiston did not protest the cancellation of the re-solicitation to our Office, but on November 30 it filed a claim for proposal preparation costs.

To recover proposal preparation costs an offeror must be able to show that, if the agency had acted properly, it had a substantial chance of receiving the award. Timberland McCullough, Inc., B-202662, B-203656, March 10, 1982, 82-1 CPD 222. Since the Army, prior to award, determined that the items which were the subject of the two solicitations were no longer needed, it is not possible for McQuiston to show that it might have received the award unless it can also show that the Army's determination and October 7 cancellation were improper. McQuiston, however, did not protest the cancellation. Under these circumstances, we will not consider McQuiston's claim.

We have taken the position that our consideration of a claim for proposal preparation costs from a party who did not file a timely protest would have the effect of undermining our bid protest procedures, since it could enable the party to circumvent the timeliness requirements of our procedures by raising allegations in the context of a claim which would involve consideration of issues that otherwise would be untimely raised. See The Land Group of Salt Lake City, B-202423, April 16, 1981, 81-1 CPD 296; DWC Leasing Company, B-186481, November 12, 1976, 76-2 CPD 404. Since McQuiston did not protest the cancellation within 10 working days of when it learned of the cancellation, as required by 4 C.F.R. § 21.2(b)(2) (1982), its claim will not be considered.

With regard to McQuiston's claim for costs for pursuing its bid protests concerning these solicitations, our Office has held that the costs of pursuing a protest are not compensable. University Research Corporation, B-196246, January 28, 1981, 81-1 CPD 50. That claim therefore is denied.

for 
Comptroller General
of the United States