



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

Decision

Matter of: Tri-Ex Tower Corporation--Reconsideration
File: B-245877.2
Date: March 23, 1993

Alan M. Lestz, Esq., Witte, Lestz & Hogan, P.C., for the requester.
Maj. Richard B. Robison, Department of the Air Force, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office denies request for reconsideration of decision, which denied the protester's entitlement to protest costs arising out of its protest of allegedly overly restrictive specifications in a procurement canceled because the agency stated that it intended to sole-source the requirement, inasmuch as the cancellation for this reason does not constitute corrective action responsive to a protest; reconsideration request based on Commerce Business Daily announcement seeking potential sources for the requirement does not demonstrate that the agency took corrective action responsive to the protest because no solicitation was issued that amended the protested specifications as was requested by the protester.

DECISION

Tri-Ex Tower Corporation requests reconsideration of our decision in Tri-Ex Tower Corp., B-245877, Jan. 22, 1992, 92-1 CPD ¶ 100, which denied Tri-Ex's claim for entitlement to the reimbursement of the costs of pursuing its protest against allegedly unduly restrictive specifications contained in request for proposals (RFP) No. F08635-91-R-0214, issued by Eglin Air Force Base, Florida, for two transportable microwave antenna tower systems.

We deny the request for reconsideration.

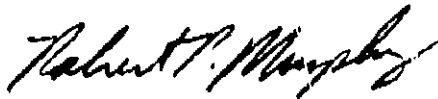
After receipt of the agency report on Tri-Ex's protest, and the protester's comments thereon, the Air Force advised our Office that it was going to cancel the RFP and obtain the requirement on a sole-source basis. Consequently, we dismissed as academic Tri-Ex's protest of the specifications. Tri-Ex claimed that it was entitled to recover its protest costs pursuant to section 21.6(e) of our Bid Protest

Regulations, 4 C.F.R. § 21.6(e) (1992). That section provides for the recovery of protest costs in appropriate circumstances where an agency takes corrective action in response to a clearly meritorious protest. See PAI Corp. et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ 508. We denied Tri-Ex's claim for entitlement to protest costs because the agency's actions were not taken to correct the allegedly unduly restrictive specifications protested by Tri-Ex; that is, the agency's decision to sole-source the requirement did not constitute corrective action taken in response to Tri-Ex's protest, which requested that the specifications be relaxed.

Tri-Ex's request for reconsideration is based on the Air Force's publication of an announcement in the October 21, 1992, issue of the Commerce Business Daily (CBD), which solicited interest in the antenna requirement. Tri-Ex asserts that this announcement soliciting sources apparently on an unrestricted basis belies the Air Force's assertion that the agency planned to sole-source the requirement, and that Tri-Ex is therefore entitled to recover its cost of pursuing the original protest, since the Air Force is supposedly taking the exact corrective action Tri-Ex sought in the original protest.

We do not agree that the Air Force's CBD announcement evidences that it is taking corrective action in response to Tri-Ex's prior protest. No competitive solicitation amending the allegedly unduly restrictive specifications has been issued. Therefore, there is no evidence that suggests the protested specifications have been amended to respond to the protester's concerns. Nor are we persuaded that the Air Force's CBD notice is inconsistent with the Air Force's professed decision to sole-source the requirement in light of the agency's obligation to provide other sources the opportunity to meet its requirements before proceeding with a sole-source procurement. See Federal Acquisition Regulation § 6.302-1(c). In this regard, the Air Force reports that the CBD announcement was to ascertain whether there were other potential sources for this antenna. In any event, the Air Force now advises that the procurement announced in the CBD has been canceled due to a lack of funds. Thus, Tri-Ex has presented no basis for reconsideration of our prior decision denying its claim for entitlement to protest costs.

The request for reconsideration is denied.


James F. Hinchman
General Counsel