



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Reliable Trash Service, Inc.--Entitlement to Costs

File: B-275050.2

Date: December 4, 1996

David K. Monroe, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., for the protester.

Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Provision in General Accounting Office's (GAO) Bid Protest Regulations for recommending that an agency pay protest costs if the agency took corrective action in response to a protest does not envision such recommendation where shortly after the protest filing the agency took corrective action on some issues but then proceeded to defend its decisions on others, and the protest on those remaining issues is pending. Moreover, even if there were some way to assign costs to the protester's pursuit of the matters on which corrective action was taken, GAO's concern with respect to entitlement claims is whether the contracting agency reacted quickly in response to a protest filing to review its actions and correct an impropriety, and in this case the action was taken promptly, early in the protest process.

DECISION

Reliable Trash Service, Inc. requests that our Office recommend the payment of Reliable's costs of filing and pursuing its protest of the terms of solicitation No. N00187-96-B-8825, issued by the Department of the Navy.

We deny the request.

Reliable filed its protest in our Office on October 10, 1996. Following receipt of the protest and before submitting its report, the Navy addressed some of the issues raised to Reliable's satisfaction, and on November 1 amended the solicitation taking corrective action on those matters. The Navy then submitted a report addressing the remaining protest issues. (The protest is pending in our Office.) Reliable claims entitlement to protest costs "because it was required to file a protest to cure infirmities in the solicitation which were on their face obvious and easily correctable."

Our Bid Protest Regulations, § 21.8(e), 61 Fed. Reg. 39039, 39046 (1996) (to be codified at 4 C.F.R. § 21.8(e)), provide that we may recommend that an agency pay protest costs, including attorneys' fees, where the agency decides to take corrective action in response to a protest. A decision whether to award costs in a particular case is based primarily on where in the protest process the decision to take corrective action was made and communicated. Pulse Electronics, Inc.--Request for Declaration of Entitlement to Costs, B-243625.3, Aug. 30, 1991, 91-2 CPD ¶ 222. Our Regulations do not envision the payment of costs in every circumstance; rather, the provision was adopted to encourage agencies to take corrective action in a reasonably prompt fashion. Thus, we will recommend payment of protest costs only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Diez Management Sys., Inc.--Entitlement to Costs, B-250831.3, Apr. 13, 1993, 93-1 CPD ¶ 313.

Here, the Navy took corrective action on some of the protest issues shortly after Reliable's filing, and prior to the date on which the agency's report in response to the protest was due, and the Navy then proceeded to defend its determinations on the remaining issues through its report. The provision in our Regulations cited above does not envision a recommendation for costs in such circumstance. Moreover, even if there were some way to assign protest costs only to Reliable's pursuit of the resolved issues, corrective action taken early in the protest process is precisely the kind of prompt reaction to a protest that our Regulations are designed to encourage. El Paso Analytics, Inc.--Entitlement to Costs, B-274315.2, Oct. 18, 1996, 96-2 CPD ¶ 148; Special Sys. Servs., Inc.--Entitlement to Costs, B-252210.2, June 8, 1993, 93-1 CPD ¶ 445.

Reliable's request is denied.

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