



## Decision

**Matter of:** Coronet Machinery Corporation--Costs

**File:** B-400197.2

**Date:** November 18, 2008

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Alani Golanski, Esq., Law Offices of Alani Golanski, for the protester.  
Maj. Walter R. Dukes, U.S. Army Materiel Command, for the agency.  
Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Request for reimbursement of protest costs is denied where record fails to establish that the agency delayed taking corrective action in the face of a clearly meritorious protest.

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### DECISION

Coronet Machinery Corporation, of Yonkers, New York, requests that we recommend that the firm be reimbursed the costs of filing and pursuing a protest challenging the exclusion of its proposal from the competitive range under request for proposals No. W15QKN-08-R-1329, issued by the Department of the Army for a quantity of shock attenuating lifting plugs and gaskets to be used on military projectiles. We dismissed the protest as academic on June 23, 2008, before receipt of the agency report, and after the agency advised our Office that it was taking corrective action in the procurement and restoring Coronet's proposal to the competitive range.

We deny the request.<sup>1</sup>

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<sup>1</sup> Coronet requests reimbursement of its costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 (1982); however, there is no legal basis that would permit recovery of protest costs under this statute. *J.C. Yamas Co.*, B-211105.2, Jan. 19, 1984, 84-1 CPD ¶ 81. We therefore limit our discussion to the reimbursement of protest costs under the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1) (2000), as implemented by our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2008).

Our Office may recommend that a protester be reimbursed the costs of filing and pursuing a protest where the contracting agency takes action which renders a protest academic prior to our issuing a protest resolving the merits of the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(e); Information Ventures, Inc.--Costs, B-294567.2, Nov. 16, 2004, 2004 CPD ¶ 234 at 2. Such a recommendation is generally based upon a concern that an agency has taken longer than necessary to initiate corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. Advanced Env'tl. Solutions, Inc.--Costs, B-296136.2, June 20, 2005, 2005 CPD ¶ 121 at 2-3. As a general rule, when an agency takes corrective action on or before the due date for its report in response to the protest, we consider the agency's actions to have been taken promptly; a protester does not have to file comments or pursue the protest further when the corrective action is taken prior to the submission of a report on the merits of the protest. See Alaska Structures, Inc.--Costs, B-298156.2, July 17, 2006, 2006 CPD ¶ 109 at 4.

In our view, a basis for the award of costs does not exist in this protest, since the Army initiated corrective action on June 18, 10 days prior to the June 28 report due date which, as mentioned above, is the point at which we will generally determine that an agency has not acted promptly. Since the agency's corrective action has not been shown to have been unduly delayed, and since we do not recommend the award of protest costs under the Equal Access to Justice Act, there is no basis to recommend reimbursement of protest costs.

Accordingly, the request for reimbursement of costs is denied.

Gary L. Kepplinger  
General Counsel