

DECISION



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

FILE: B-220667.2 **DATE:** November 20, 1985
MATTER OF: Information Marketing International--
Reconsideration

DIGEST:

1. Protest against award of delivery order is rendered academic by agency's cancellation of delivery order.
2. Protest that agency may not conduct a prospective resolicitation properly is premature.
3. Recovery of the costs of pursuing a protest is inappropriate where the remedy afforded the protester is the opportunity to compete in the procurement.

Information Marketing International (IMI) requests reconsideration of our dismissal of its protest against the Air Force's award of delivery order No. F08651-86-F-5039 to Information Handling Services (IHS). The award was made under a General Services Administration Federal Supply Schedule contract for library microfilm subscription services. We dismissed IMI's protest as academic after the Air Force notified us that it was canceling the delivery order and intended to resolicit the requirement.

IMI had protested that the Air Force improperly failed to make an award which resulted in the lowest overall cost. The Air Force responded that, although it believed that IMI's protest was without merit, it canceled the delivery order because the agency failed to issue a synopsis for competitive price comparison purposes.

IMI asserts its protest was correct on the merits and that the Air Force cancellation of the procurement establishes the validity of its case and constitutes a "defacto" sustain. IMI claims that, under the provisions of the Competition in Contracting Act of 1984, it is entitled to the costs of pursuing its protest. IMI also expresses concern that the Air Force may not conduct the resolicitation properly.

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We affirm our dismissal of IMI's protest, dismiss IMI's protest against the prospective resolicitation and deny IMI's claim for the costs of pursuing its protest.

While IMI continues to argue that the award to IHS was improper, our Office will not consider a protest where the procurement underlying it has been canceled since cancellation of the procurement renders the protest academic. Catalyst Financial Corp.; The Breitman Co., B-213684, Feb. 28, 1984, 84-1 C.P.D. ¶ 246.

Also, we consider premature IMI's allegation that the Air Force may not conduct the resolicitation properly. Amertex Enterprises, Ltd., B-217456, Feb. 7, 1985, 85-1 C.P.D. ¶ 161.

Finally, IMI seeks the costs of pursuing its protest. The Competition in Contracting Act of 1984 31 U.S.C.A. § 3554 (West Supp. 1985), and our Bid Protest Regulations, 4 C.F.R. § 21.6 (1985), provide authority for our Office to grant the costs of pursuing a protest. Our regulations limit the recovery of the costs of filing and pursuing a protest to situations where the protester is unreasonably excluded from the procurement, except where our Office recommends that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(e). We have construed this to mean that where, as here, the protester is given the opportunity to compete for the award, recovery of the costs of filing and pursuing the protest is inappropriate. See Federal Properties of R.I., Inc., B-218192, May 7, 1985, 85-1 C.P.D. ¶ 508; The Hamilton Tool Co., B-218260.4, Aug. 6, 1985, 85-2 C.P.D. ¶ 132. We therefore deny the claim for the reimbursement of such costs.

for *Seymour E. Fies*
Harry R. Van Cleve
General Counsel