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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Care Hospital Supply, Inc.  
File: B-226002  
Date: March 2, 1987

## DIGEST

Where a protest is dismissed as academic, there is no decision on the merits by the General Accounting Office, and therefore, no basis on which protest or bid preparation costs may be recovered.

## DECISION

Care Hospital Supply, Inc. (CHS) protests the award of a contract for home oxygen services to National Medical Homecare, Inc. under invitation for bids (IFB) No. 570-98-86, issued by the Veterans Administration Medical Center (VA), Fresno, California. CHS contends that the VA misevaluated the prices received in response to the IFB and made award to other than the low bidder. We dismiss the protest and deny the protester's claim for bid preparation costs and the costs of filing and pursuing its protest, including attorneys' fees.

The VA has advised us that it finds the protest to have merit. Specifically, the VA states that the IFB was defective because it failed to indicate the estimated quantities required for bid items and that this solicitation defect made a proper determination of the low bidder impossible. Accordingly, the VA will now issue a revised solicitation and will terminate the contract awarded to National if the latter is not the low bidder under the resolicitation. The agency argues that we therefore should dismiss the protest as academic.

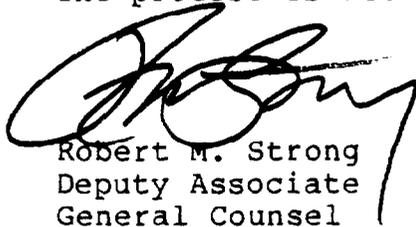
CHS does not dispute the VA's determination to resolicit. However, the protester does claim bid preparation costs, attorney's fees and lost profits. In support of its position, CHS states that it has been unnecessarily put to expense, time, and trouble by the VA's improper evaluation and that the agency should have to bear these additional costs.

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Since the agency has taken corrective action which the protester does not challenge, we think the protest is academic. See Monarch Painting Corp., B-220666.3, Apr. 23, 1986, 86-1 CPD ¶ 396. Concerning the protester's claim for the costs of filing and pursuing its protest, including attorneys' fees, and bid preparation costs, our authority to allow the recovery of such costs is predicated upon a determination by our Office that a solicitation, proposed award, or award of a contract does not comply with a statute or regulation. See 31 U.S.C. § 3554(c)(1) (Supp. III 1985). Where, as here, a protest is dismissed as academic, there is no decision on the merits and thus, no basis for award of costs. See Systems Management American Corp., B-224229, Nov. 10, 1986, 86-2 CPD ¶ 546.

Finally, as noted above, CHS suggests that we grant the firm the profits it would have made had the contract been properly awarded to it. However, the general rule is that anticipated profits may not be recovered even in the presence of wrongful action. See Smoke Busters, B-219458, Nov. 1, 1985, 85-2 CPD ¶ 501.

The protest is dismissed and the claim is denied.



Robert M. Strong  
Deputy Associate  
General Counsel