

Cunningham



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Rotair Industries, Inc.--Reconsideration  
File: B-226661.2  
Date: June 30, 1987

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### DIGEST

Claim for cost of filing and pursuing a protest is denied where protest is academic because improper award was terminated and using agency no longer has need for item.

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### DECISION

Rotair Industries, Inc., has requested reconsideration of our April 21, 1987, dismissal of its protest. We dismissed the protest as academic because it was our view that the contracting agency, the Defense Logistics Agency (DLA), had granted the relief the protester requested, namely the termination of an improper award which was the subject of the protest.

In reply to our dismissal, Rotair asserts that DLA did not give the complete relief the company requested in that DLA did not compensate Rotair for its reasonable costs of filing and pursuing the protest.

We deny the claim.

Request for Proposals No. DLA700-87-R-0384, issued on October 28, 1986, for proposals to be received by December 1, was for a cover assembly that was identical to, or interchangeable with, the cover assembly identified by a United Technologies Corporation part number. Rotair submitted its proposal accompanied by required technical data. Rotair states that it was thereafter told by DLA that the requirement was still under evaluation. Ultimately, on February 11, 1987, Rotair received a notice from DLA which stated that the RFP had been canceled and that an award had been made under a basic ordering agreement. The awardee, Rotair later learned, was United Technologies at a substantially higher price than that proposed by Rotair under the RFP.

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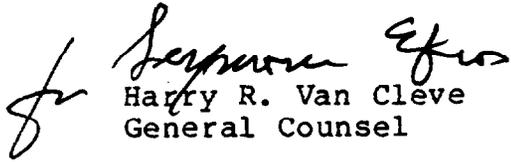
Rotair then protested the higher-priced United Technologies award to our Office on the basis that Rotair had never been properly notified of the acceptance or rejection of its proposed part. Rotair asked our Office to direct DLA to terminate the award and to make award to Rotair. Additionally, Rotair claimed "filing costs, including attorneys' fees" be awarded to it. In reply, DLA informed our Office that the order to United Technologies had been improperly issued since "discussions [leading to possible qualification of Rotair's part] should have been held with Rotair" prior to making any award decision. Therefore, DLA decided to terminate the award and issue a "new purchase request" under which Rotair would have the opportunity to compete once the acceptability of Rotair's part had been determined pursuant to further evaluation of additional technical data from Rotair. Once having obtained this information from DLA, we dismissed the protest as academic on April 21, 1987.

Rotair subsequently requested reconsideration of our dismissal, arguing that notwithstanding DLA's termination of the award it was clear that DLA had failed to evaluate Rotair as the alternate source, and that Rotair was therefore entitled to be compensated for its above claim.

In commenting on Rotair's request for reconsideration, DLA informed our Office that the using agency, the Navy, had informed DLA that the item was no longer needed and that DLA should cancel any "pending or future procurements" of the item.

Our authority to allow the recovery of bid preparation costs and the costs of filing and pursuing a protest is based on a determination by our Office that a solicitation, proposed award, or award of a contract does not comply with a statute or regulation. Rix Industries, Inc.; Ingersoll-Rand Co., B-225176.3; B-225176.4, Mar. 30, 1987, 87-1 C.P.D. ¶ 356, citing 31 U.S.C. § 3554(c)(1) (Supp. III 1985). Where a protest becomes academic, and we do not issue a decision on the merits, there is no basis for the award of these costs. Systems Management American Corp., B-224229, Nov. 10, 1986, 86-2 C.P.D. ¶ 546. In this case, Rotair's protest against the improper award has been rendered academic by the cancellation of the award and the Navy's subsequent advice to DLA to cancel any procurements of the item as it is no longer needed.

We therefore deny Rotair's claim for the costs of filing and pursuing its protest.

 Harry R. Van Cleve  
General Counsel