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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Essex Electro Engineers, Inc.--Claim for Costs

File: B-229491.3

Date: May 25, 1988

DIGEST

Under General Accounting Office Bid Protest Regulations in effect for protests filed prior to January 15, 1988, protester is not entitled to recover its costs of filing and pursuing successful protest, including attorneys' fees, where initial decision included recommendation that award be made to protester, and agency agrees to do so.

DECISION

Essex Electro Engineers, Inc., requests that we find it entitled to the costs of filing and pursuing its protest of an award made by the Department of the Navy to Rosen Electrical Equipment Co., under request for proposals (RFP) No. N00146-87-R-0053, for motor-generator sets. In our initial decision, Essex Electro Engineers, Inc., B-229491, Feb. 29, 1988, 88-1 CPD ¶ 215, we sustained Essex's protest that the motor-generator sets offered by Rosen failed to conform to the mandatory specifications of the RFP; we recommended that the award to Rosen be terminated for the convenience of the government and that award be made to Essex, if otherwise appropriate. We recently denied the Navy's request for reconsideration of that decision, Department of the Navy--Request for Reconsideration, B-229491.2, May 9, 1988, 88-1 CPD ¶ _____, and the agency advises us that consequently it will make award to Essex. Essex now claims also to be entitled to the costs it incurred in connection with pursuing the initial protest and in responding to the request for reconsideration.

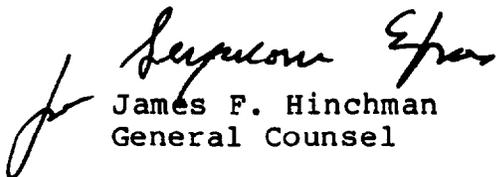
We deny the claim.

Our Bid Protest Regulations applicable to protests filed prior to January 15, 1988, as was Essex's protest, provide that the costs of filing and pursuing a protest may be recovered where the agency has unreasonably excluded the protester from the procurement, except where our Office recommends that the contract be awarded to the protester and

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the protester receives the award. 4 C.F.R. § 21.6(e) (1987). As noted above, we have recommended that award be made to Essex and the agency has agreed to do so. Accordingly, the recovery of costs is not an appropriate remedy in this case. R. J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220.

The claim for costs is denied.


James F. Hinchman
General Counsel