

Arsenoff



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Rosemount Analytical, Inc.

**File:** B-235740

**Date:** September 26, 1989

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### DIGEST

1. Protest is academic where agency acted reasonably in issuing a corrective amendment satisfying the protester's objections to an ambiguous solicitation.
2. Protester is not entitled to bid protest costs where there is no decision on the merits.

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### DECISION

On June 2, 1989, Rosemount Analytical, Inc., protested an ambiguity contained in request for proposals (RFP) No. N00140-89-R-1805, issued by the United States Navy for conductivity consoles and sensors; the basis of the protest was a set of contradictory references in the RFP regarding whether or not the procurement was set aside for small business. Although Rosemount--a large business--now agrees that the Navy subsequently corrected the ambiguity through an amendment dated June 2 which clearly indicated that the procurement was restricted to small businesses, it nonetheless claims that it is entitled to its protest costs.

We dismiss the protest and deny the claim for costs.

The RFP was issued on May 8, with a June 8 date for receipt of proposals. On or about May 19, Rosemount contacted the agency to question the restriction of the RFP to small businesses and to note that one RFP clause indicated that the procurement was unrestricted. The Navy advised Rosemount that the clause was included in error and would be deleted by an amendment. The agency reports that it did not immediately issue the amendment since it was awaiting technical advice on anticipated specification changes and sought to combine these with the clause deletion in one amendment. After being advised that the protest had been filed, on June 2 the Navy amended the RFP to delete the

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clause making reference to an unrestricted procurement and postponed the receipt of proposals indefinitely in light of the protest.

Rosemount agrees that the June 2 amendment satisfied its concerns. Therefore, its protest that the solicitation was ambiguous is academic and will not be considered on the merits. Steel Circle Bldg. Co., B-233055 et al., Feb. 10, 1989, 89-1 CPD ¶ 139. With respect to Rosemount's claim for its protest costs, we note that our authority to award such costs is predicated on a determination by this Office that an agency has acted contrary to statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. IV 1986). Thus, a decision on the merits is an essential condition to a determination that the protester is entitled to the award of costs. Associated Professional Enters. Inc., B-231766, Oct. 12, 1988, 88-2 CPD ¶ 343. In light of our conclusion that the protest is academic, there is no need for a decision on the merits, we therefore have no basis for awarding protest costs to Rosemount. Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen 607 (1988), 88-2 CPD ¶ 213.

Rosemount nevertheless argues that, because its protest resulted in an amendment which allegedly enhanced competition, it is entitled to its costs under Automation Management Consultants, Inc., 68 Comp. Gen. 102 (1988), 88-2 CPD ¶ 494. We disagree. Unlike the situation here, the case cited by Rosemount involved a solicitation which remained ambiguous after the agency amended it and after the agency filed its response to the protest. Accordingly, we sustained that protest, recommending resolicitation under a solicitation which was further revised, and, we therefore, had a basis to award costs. As indicated above, no such basis exists in this matter. Teknion--Claim for Protest Costs, 67 Comp. Gen. 607, supra.

The protest is dismissed and the claim for costs is denied.

  
Ronald Berger  
Associate General Counsel